

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NOS. F508014 & F509518

GERTRUDE BROWN, EMPLOYEE	CLAIMANT
QUEBECOR, INC., EMPLOYER	RESPONDENT #1
TRAVELERS PROPERTY & CASUALTY CO., CARRIER	RESPONDENT #1
SECOND INJURY FUND	RESPONDENT #2
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT #3

OPINION FILED MARCH 15, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on December 15, 2006, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE MARK LEDBETTER, Attorney at Law, Memphis, Tennessee.

Respondents #1 represented by the HONORABLE MARK MAYFIELD, Attorney at Law, Jonesboro, Arkansas.

Respondent #2 represented by the HONORABLE DAVID L. PAKE, Attorney at Law, Little Rock, Arkansas.

Respondent #3 represented by the HONORABLE JUDY W. RUDD, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in the above-style claims to determine the claimant's entitlement to workers' compensation benefits.

On June 5, 2006, a pre-hearing conference was conducted in these claims, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered

by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the afore. The Pre-hearing Order is herein designated a part of the record in this claim as Commission Exhibit #1.

The testimony of Gertrude Brown, the claimant, along with the deposition testimony of Robert Gray and Dr. Greg Ricca, coupled with medical reports and other documents comprise the record in these claims.

DISCUSSION

Gertrude Brown, the claimant, with a date of birth of September 17, 1950, has an eleventh grade education. The claimant was raised in St. Louis, Missouri, and moved to Arkansas in 1974. Claimant, who testified that she commenced her employment with respondent #1 on July 26, 1977, has been divorced since September 12, 1986.

The claimant worked continuously for respondent #1 from her date her employment commenced until April 7 or 8, 2005. Respondent #1 is in the printing industry, manufacturing magazines and catalogs. In the course of her work the claimant worked in an automated areas around machines. Regarding the various jobs and tasks she performed during her employment history with respondent #1 claimant's testimony reflects:

Virtually, yes. I became a jack of all trades. If they needed me to fill in here or there, I would do that. And a lot of it consisted of lifting and - well, we called it feeding pockets, sorting, bagging, and boxing - all of the above - seeding pockets - all of the above - strapping.(T. 27).

Claimant presently physical complaints relative to her neck, bac, and both arms all of which she attribute to the performance of her assigned job duties in the employment of respondent #1. Claimant testified, regarding the afore:

No, sir, I cannot. I look at it as an ongoing thing, you know. It was never a really pinpoint injury. It was from all the exertion, overworking, an ongoing incident. (T. 29).

While noting that the company changed names - from W.A. Krueger Co. to Renyae to Quebecor, Inc. - during the course of her employment history with same claimant's testimony reflects that the business has essentially remained the same.

Claimant maintains that she first experienced difficulties/problems with her hands in 1981 or 1984, in the form of carpal tunnel. Claimant testified:

I think my first carpal tunnel was in like '81 - I think '81 or '84 - I'm not sure. But it was so early on that I was one of the first people - one of the first people - one fo the first American's to have carpal tunnel where they didn't know how to categorize it. They didn't know if it was a sickness or work-related injury. (T. 29-30).

As a consequence of the carpal tunnel syndrome claimant testified she underwent surgery on her right wrist the same year it was diagnosed:

No, wait, I had - the first surgery was in '81 or '84, and then I had the same surgery on the same hand. And then I had the right hand done the first time, and the next time I had to have the right hand and the left hand done.(T. 30).

Claimant asserts that the surgeries were performed by Dr. James Schrantz, who released her to return to full duty work without restrictions. All of the carpal tunnel syndrom surgeries were completed by 1985. Claimant testified that she does not recall receiving and impairment rating as a result of the surgeries, nor did she have a workers' compensation hearing.

In 1989 claimant had a low back problem and attended a workers' compensation hearing seeking benefits. The 1989 hearing on her back claim is the only hearing that the claimant attended relative to injury growing out of her employment. Claimant's testimony reflects:

I want to say - I want to say - I'm not too sure, but I'm almost sure that the back is what they didn't want to pay for. The said I didn't do it out there. (T. 31).

Claimant testified regard her regular job duties that she discharged following her resumption of work in 1985. The testimony of the claimant reflects that she at a machine handling stacks of printed material ranging from 5 to 15 to 25 pounds in a stack. Claimant continued:

I would have to lift up the stack, bring it in, hold it, and then just open my hand, push it out, and - anyway that's what I would have to do, and then lift it, lift it up to set it in what we would call pockets, or do the pinch you know - the power grip and pinch it then pick it up like this, and slide it in one. (T. 33).

Regarding the frequency that she performed the above job maneuver claimant testified:

We manded - we manded at lease 6 or 7 pockets, so, give and take whatever the form weighs, within maybe 10, 15 minutes, 15 minutes a stack or a minute or so, cause we'd have to stack each one of the pockets, and this is done within minutes.

* * *

Well, within - sometimes within 10 minutes, I'd have 5 or 6 lifts maybe go on pass - through there - you know, the big lifts, or just little bitty ones maybe take in 10 - maybe take 10 minutes to run - the thin ones - whereas it might take 10 minutes to run five lifts or something like that, of the bigger ones. (T. 34-35).

Claimant testified that some of the machines ran up to 60 to 70 pounds of books an hour while some of the machines ran up to 60, to 70 pounds of book a day. The testimony of the claimant further reflects:

Virtually, in an 8-hour period, we'd go through a skid . . . what it was basically 8 to 10 layers on there and there's 24 lifts on a layer, so - and we would virtually, depending on how fast it runs, and it's real hard to say, because it, like I said, this machine - this one is faster that this one,

and the bigger ones, I take more. The bigger ones take faster - go faster - so, I mean it's kind of hard to keep up with the 16-page and the 4 page. (T. 36).

Claimant also provided testimony regarding other jobs that she performed involving the use of her hands on the assembly line:

Well, I did a stacking off. I would have to pick the books up and either put them in a carton, and I'd take the carton and stack it on a skid, or bags - put the books into the strapper and tie them up, bag them, pick the bags up - which the bags could weigh up to 100 pounds, or, and then there was the sorting, where I would have to stack the books up and send them down the line to be tagged.

As far as the sorting goes, the books come down the line and I'd have to grab each - and push them up like this, and grab them, and then take them and stick them over here to be processed or . . . (T. 36-37).

Claimant estimated that the books weighed up to 20 pounds. Claimant's testimony further reflects:

When I'm doing - when we're breaking down these books like the post office - the post office, zip codes, the city, the state. And then sometimes, like big cities have bigger - three digits - bigger - like 724 is Jonesboro - that would be the whole thing. But sometimes we have to break that down, cause the stacks could be this big, or they could be this big, and we have to constantly do this - break them down - state or whatever, city, states, and zip codes, just like the post office would do. (T. 37-38).

One of the claimant's job task also involved mail bags, which continued until the early '90's:

I would have to take - undo the mail bags off the rack and lift the mail bags up and put them on the skid and I'd have to turn around and put another mail bag up there so it would be ready to be filled. (T. 38).

The mail bags weighed up to 100 pounds.

The claimant testified regarding the job task activities that caused pain in her neck and low back:

Mostly stacking off, and that's when I'd have to stack books and

stack them - from the machine, stack them on skids that's down like that - steady bending over and that was the cause of my lower back and the one that would mess up with my neck would be the lifting - the heaviness of the books - having to put the books in the boxes. (T. 39).

Claimant estimated that she engaged in the repeated bending, "about 20 times a minute, depending on the bags and the boxes and stuff - how fast they were", over the course of her 8-hour shift. (T. 39).

Claimant testified that she strained her neck as she performed the job task of "feeding pockets". The testimony of the claimant reflects:

That was virtually my job when I left, too - other than - other than before - up until 6/21/04, when Dr. Lackey put me off. (T. 40).

Claimant testified that she was working with low back and neck pain in June 2004. Claimant maintains that her neck and low back problems were not severe enough to prevent her from working. It is the opinion of the claimant that but for the difficulties she experienced with her hands, which she attribute to her employment, she could probably be working.

Claimant testified that respondent #1 has not offered her any sort of remedial work since her release from her surgery. Claimant denies that she was paid any temporary total disability benefits by respondents #1 from June 21, 2004, to the present.

Claimant maintains that she reported to Mr. Robert Gray, the Safety and Training Coordinator for respondent #1, that she was having problems with her hands. Regarding the afore conversation, the claimant testified:

Well, the first of - when I first went to Mr. Gray with it, he made an appointment with Dr. Lack a couple of weeks or so . . .

And when I first brought it to Mr. Gray's attention, he was good about making the appointment and I went to Dr. - he made the appointment

with Dr. Lack, and Dr. Lack said - I asked Dr. Lack about whether it was carpal tunnel or not and he said no. And so I had my doctor - Dr. Lack never ran any kind of nerve test studied or anything, so I had my family physician, and he was the one that authorized the nerve test studies. And when it come back that it was carpal tunnel, I went to Mr. Gray and told him, Bob, it was carpal tunnel. But that was the last that was said of it. Whenever I would go into his office, he was never there, or he was with someone, and we couldn't tell - well, this was always going on our break when we had to come to them like that. (T. 41-42).

The evidence reflects that Dr. Michael Lack was the designated medical provider for respondents #1.

The testimony of the claimant reflects that she continued discharging job duties for respondent #1 until June 2004. Claimant explained:

No, I - Dr. Lack - out of the - everything they could do - I could do - on the job - the only thing that was left was the one thing for me to do, and that was what they called sorting, as I described while ago.

And that's where you would have to scoop the books up and push them up and push them. And if there wasn't a sorter's job - running it - if anything wasn't sorted, I wasn't getting to work. (T. 42).

As a consequence of the afore, claimant testified that she was missing work:

Oh, yes, quite a bit. I mean, I would even ask him - they would even tell me that sometimes at three o'clock, prior to going home, to check with him to see if I had to come in in the morning - if anything was going to be running for me tomorrow that I could be doing. And sometimes I would get there and then they'd say, well, we changed our mind, we're not gonna run that today. (T. 42).

Claimant asserts that she was informed by either Gary or either Rick Barnett, foremen on the first shift of the unavailability of work.

The testimony of the claimant reflects that when she last worked for respondent #1 she earned \$11.53, per hour. Claimant testified that she normally worked 37 ½ hours per week as

well as two weekends out of a month for the overtime and double time. Claimant explained:

On weekends - on Saturdays, it was 7 ½ hours and Sunday, both. 7 ½ was time - on Saturday - was time - time-and-a-half, and on Sundays, maybe, if I'm not mistaken, was double time.

I would try to have a Saturday and a Sunday on one check. (T. 43-44).

Regarding other job tasks that she performed in June 2004 that produced pain on her hands, neck or low back, claimant testified:

Wh had some - we was running this book called Elle, and it was a 16-page - the thickness - and somehow or another the forms had got wet and I had to take as many as my hands could carry and beat them on the counter to break them up in order for them to work. (T. 44).

Claimant performed the afore task for two to three days. Claimant explained the significance of the work with the wet stock:

That's what led up to the pain in my hands - triggered the pains in my hands. I really do believe that. (T. 45).

Claimant testified that the job task of sorting, which was recommended by Dr. Lack, was performed on a rapid repetitive basis:

Yes, I was a sorter - you're sorting - you're pushing books this way and making sure the books do not come together - do not cross in between. You've got a stack going - your stack and my stack - I would have to make sure they were separated. Your stack of books and my stack of books - make sure they were separated. They were usually separated by name on the covers of the books. (T. 45).

Claimant's testimony reflects that during the same time she was performing the sorting job, as recommended by Dr. Lack, she was also receiving medical treatment from her family physician:

Yes, after Dr. - after my family doctor, Dr. McKee, had my tests done, and it come back to - what you call it - to be carpal tunnel, he made

an appointment with Dr. Ricca, and Dr. Ricca had told me - when I went to see Dr. Ricca, he told me you need the surgery, and I said, but, I can't - I can't do it right now. He said, well, you will - he told me, you will need surgery, eventually. And I said, well, I just can't do it right now. I said there's a bunch of stuff going on at the job with them - wanting to put it under workman's comp - I'll just wait. But, after a while, I couldn't take it no more. I had to have some kind of relief. (T. 46).

Claimant explained that she lost total use of her thumb.

Claimant maintains that she provided notice to respondent #1 that she was continuing to have problems with her hands. Claimant worked continuously for respondent #1 or its predecessor from 1978 until June 2004. Claimant noted that in the factory she was third in seniority. Claimant asserts that she has always worked and never received any sort of government relief prior to June 2004. In terms of time away from work, claimant testified:

No, I think in 2000, I think I had knee surgery or something in 2000. I think they had to bump them down some once in 2000, when I came back to work - and I want to say 2000 - I want to say - but I'm not sure. But, other than that, yeah. (T. 47-48).

The testimony of the claimant reflects that during safety meetings discussions centered mostly on prevention of injuries to the back.

Claimant's testimony reflects that Dr. Ricca examined and treated her for her neck and back complaints during the time treatment was being provided for the complaints relative to her hands:

Yeah, he set me up some appointments with a Dr. Savu, which was supposed to do some sort of - Dr. Savu did what he called procedures and as far as shooting needles and stuff into my back - injections in my back. (T. 49).

The afore injections were in the claimant's lower back.

Claimant underwent her first surgery for carpal tunnel syndrome by Dr. Ricca on April

11, 2005, and the second one on June 5, 2005. The testimony of the claimant reflects that she was informed by Dr. Ricca that her ulnar nerve required surgery, however she has not had the procedure performed. Claimant testified that she is uncertain if she will have the procedure done noting that she is “tired fo being cut on “. (T. 50). Claimant acknowledged that in November 2005, she was released by Dr. Ricca as having reached maximum medical improvement.

Claimant’s testimony reflects that in her present physical condition she is unaware of any kind of work to which she could return. The claimant, who is right hand dominate, testified regarding the physical problems that she is having attributable to her hands:

It’s had for me to do the personal things to myself. I’ve had to find ways to accommodate bras, belts, tying my shoes, personal hygiene, and all this, because of the pain that goes with it. (T. 50).

Claimant explained that she has difficulty lifting anything of any substance with her right hand; that she drops things (coffee cups, bowls); that she is unable to pick up thing quickly:

No. I ‘ve had to stop and think about, here lately, the way I grip or grasp.

Because I don’t want to cause myself no more pain. It’s already painful when I go, so I’ve just got to make sure I get the right grip - pick it up the right way - so it won’t hurt anymore. (T. 51).

The testimony of the claimant reflects that she had undergone a total of five (5) surgeries on her knee, left and right arms. Claimant has never undergone a surgical procedure on either her neck or low back.

Claimant asserts that had she been offered a job by respondent #1 at the conclusion of her treatment cycle by Dr. Ricca she would have accepted and tried to perform it. Regarding any discussion with the individual who performed the functional capacity evaluation, claimant

testified:

No, the only thing - I asked him was - the only thing that I couldn't do was - he wanted me to do something and I told him that I couldn't even have anything to do with it. I couldn't lift this heavy box and drop down on one knee, and I told him I couldn't. He said that's okay. So, I explained to him that it was not the back or the neck, but it was the knee, the reason why I didn't do it. (T. 52).

Claimant testified that if she physically could, would be back at work making a good income.

The claimant described her thoughts on her job and work ethic:

Yes, I did. I took very much pride , and to being one of the best, if not the best, pocket feeders there was. I took a lot of pride in it. (T. 53).

The testimony of the claimant reflects that the problems that she is having with her hands are the primary reasons she is unable to do the kind of work that she normally does. Further, the claimant denies that non-work personal activities caused or contributed to the current problems with her hands.

Claimant denied that Dr. Parsioon ever discussed with her the type of work that she could do. Claimant testified that she spent approximately one (1) with Dr. Parisoon during her evaluation. Likewise, claimant noted that there was no discussion regarding the type of work that she could perform with the Functional Capacity examiner. The testimony of the claimant reflects that she was treated by Dr. Gregory Ricca from August 2004 until her release in November 2005, approximately 14 months.

On cross examination, claimant acknowledged that EMG and Nerve Conduction Studies were performed on her hands in 1995, approximately 10 years subsequent to her 1985 surgery. Claimant also had EMG/NCV's performed in 1988. The testimony of the claimant reflects that she had symptoms of pain, numbness, and tingling in her hands between the early '80's and 2004.

Claimant noted that whenever she would go to the Human Resources that would be the first thing they would check. Claimant's testimony reflects, regarding her symptoms that "every so often, they would flare up". Claimant acknowledged that in some instances she went out and sought medical treatment relative to her symptoms.

Regarding any diagnosis relative to her neck complaint prior to 2004, the testimony of the claimant reflects:

I don't think so. I don't - I don't really know. They want to say it was the same thing, but I've never been treated for my neck. I've been treated for my back. (T. 58).

Claimant acknowledged that she has had a couple of back claims in the past at respondent #1, one of which in 1988 was denied by an Administrative Law Judge for failure to report an injury.

Regarding a diagnosis of arthritis prior to 2004, claimant testified:

I think so, yes. They said anywhere I hurt - they told me when I had that, that I would get arthritis. Dr. Schrantz made that remark when he first did the carpal tunnel. He made the remark about arthritis setting in once carpal tunnel got in there. (T. 59).

Claimant acknowledged that she has arthritis in other parts of her body. Claimant offered that if she was on medication for arthritis prior to June 21, 2004, it was either Celebrex or Vioxx.

The claimant started smoking in either 1968 or 1969. While the record reflects that at one time the claimant smoked less than a pack a day, claimant testified that in June 2004 she was smoking only a half a pack a day.

The testimony of the claimant reflects that in 1995, in addition to Dr. Callahan, a chiropractor, she was seen by Dr. Terry Braden, at the request of respondent #1 relative to her back complaints. With regard to her June 21, 2004, complaint, claimant testified that a few days

prior to that date she begin to experience symptoms. Claimant observed that she worked with the damaged /wet Elle magazines within a few days of June 21, 2004. Claimant performed the job duties of “feeding pockets’ at the time to the afore. Claimant testified that while her main job was a “pocket feeder”, she performed other job tasks depending on where she was needed and assigned:

But if they needed someone to go to the end of the machine to collect the books - what we call stacking off - to take them off the conveyor belt and put them on the skid - we call that stacking off. Fi they needed someone to sort the books out by whatever means necessary, by stacks, by Addresses, by whatever, I would do that. If they needed someone to bundle up the books, tie up the bundles of books, I could do that. (T. 65).

The testimony of the claimant reflects that during the course of a shift she completed at least a pallet, which consisted fo 8 to 10 layers with approximately 24 lifts per layer. Claimant completed 10 to 15 lifts a minute. The weight of the lifts or stacks were between to 15 to 20 pounds. (T. 66-67).

Claimant concedes with the first reporting of June 21, 2004, her symptoms were in her hands, and specifically her thumbs and the loss of use of them. Per directions of respondent #1 the claimant was seen by Dr. Michael Lack relative to the afore. By the time of her visit to Dr. Lack, claimant testified that she had symptoms in both her wrists and thumbs and suspected she was suffering from carpal tunnel syndrome. Claimant testified regarding the disposition of her complaint following the visit to Dr. Lack:

I was denied workman’s comp when I talked to Mr. Gray about it, and since - he said Dr. Lack said it was not workman’s - I mean, carpal tunnel - they said Dr. Lack said it was arthritis, so workman’s comp denied me, and that’s when I had to do - I followed the procedures, and I called my doctor, and my family doctor set it up. (T. 68).

The claimant did not file a change of physician request before being seen by her family physician and later referral to Dr. Ricca. Claimant testified:

No. I thought it was my right to go to my family doctor. I called myself following the legal procedures - report it to the company, see the company doctor, and then take it from there, as far as your family doctor goes. (T. 69).

Claimant asserts that Dr. Lack diagnosed her complaint “degenerative disease arthritis” at the time her claim was denied as compensable. Claimant executed a Form AR-N on July 7, 2004. Claimant testified that after Dr. Sanderson McKee had diagnostic studies performed which confirmed CTS she returned to Mr. Gray and relayed the results.

The testimony of the claimant reflects that her earlier treatment for CTS in the early 1980's was not treated as work-related. Claimant received short term disability benefits. Claimant testified that at the time of her 2004, complaints, while her neck and back complaints were present, she was not complaining about them. Claimant is unsure if she reported having neck and back problems that were work-related to respondent #1 prior to her hearing request. Claimant maintains that while she was having neck and back problems that were work-related on June 21, 2004, they did not interfere with her in performing her job duties. Claimant testified that she “only reported what interfered with” her job. (T. 74). According, claimant never requested of Mr. Gray access to medical treatment relative to the neck or back.

Restrictions were placed on the claimant’s employment activities by Dr. Lack, to include no power grip, no lifting, no flexing of the wrists, and no feed pockets. Regarding the accommodation by respondent #1 with respect to the afore, the testimony of the claimant reflects:

Somewhat. The only time I would be able to do - the thing I was able to do is what I described while ago as sorting, and if that wasn’t

running - if they wasn't doing any kind of sorting, which I described while ago, then I didn't get to work. (T. 75).

The claimant's testimony reflects that she is uncertain if she told Dr. Ricca that her back complaint was related to her work. Claimant testified that she told Dr. Ricca that her wrist complaints were work-related. Claimant took sick leave in order to have the wrist surgery after respondents #1 denied compensability. The claimant also filed a claim for short term disability after she was off work due to the wrist surgeries, for which she received \$264.00, per week gross, for 12 weeks. Claimant disputes the assertion of Mr. Gray that his first knowledge that her carpal tunnel problems were work related was after she had gone out on short-term disability. (T. 78).

The testimony of the claimant reflects that she has not looked for a job since June 21, 2004. Further, the testimony of the claimant reflect that she has not contacted ESD or any kind of rehabilitation service. Claimant testified that she would be willing to go back to work if there was a type of job that she could perform. Claimant is currently receiving Social Security Disability benefits of \$1123.00, per month.

The testimony of the claimant reflects that prior to June 21, 2004, she did garden, however is unable to do so. Claimant maintains that she does very little cooking. Claimant noted that she has difficulty stirring or mixing with her hands. Claimant testified regarding the activities that currently fill her day:

I usually have my grandkids. I walked long before, I was in the hospital I was walking. Movies, TV, books. (T.81).

The claimant's work experience reflects that she has had some work and training in computer and keypunch operation, as well as some experience doing waitress-type work. Claimant testified that she would be unable to do sales or working at a cash register because of

back pain as well as pain in her hands with repetitive motion activities.

Claimant's testimony reflects that she continues to experience numbness in both hands.

Claimant also testified that she has a problem in her elbow, although she is uncertain of its status as of June 21, 2004:

I don't think so. I can't recall. There was just so many pains around the 21st that I can't recall too much of any other pain but this - that's what I focused on. (T. 82).

The claimant did note regarding the elbow:

No. No. The elbow would flare up like the back would, every now and then, but it was not a habit. Even Mr. Gary, himself, knows that he's given me what they call them tennis elbow things on several different occasions. So, there was no big complaint about the elbows, though. (T. 82-83).

The claimant disagrees with the Functional Capacity Evaluation of her ability to perform light duty work. Claimant asserts that her ability to perform light duty work would depend on the type of work to be done.

Claimant is not currently taking prescription medicines for either her hands, wrist, elbow, back or neck complaints, but rather over-the-counter medicine. Claimant testified that it has been over a year since she was seen by a physician, Dr. Ricca, regarding her hands. Claimant noted that she was released by Dr. Savu regarding her neck and back in the early to mid part of the year, 2006.

The testimony of the claimant reflects that she had only one knee surgery, which was in 2000. In the 1980's Dr. Schrantz performed carpal tunnel release surgeries on both of the claimant's wrists, however a permanent physical impairment was not assigned. Claimant returned to full duty work for respondent #1. Claimant later experienced back complaints for

which she received arthritis medicine, however was not placed on any permanent physical restrictions by her treating physician, nor was an anatomical impairment rating generated as a result of same.

The claimant's neck and low back complaints did not adversely impact her ability to perform her assigned job duties. Further, the testimony of the claimant reflects that by the time of her June 21, 2004, workers' compensation claim she had never had a permanent physical impairment rating nor had she been placed on permanent light duty restrictions. Finally, the claimant asserts that she is unable to work due to her hands/wrist complaints and not her back or neck.

The testimony of the claimant reflects that from 1995 until 2004 she did not receive treatment relative to her hands or carpal tunnel. Further, the claimant testified that during the 14 to 15 months that she received treatment under the care of Dr. Ricca for her carpal tunnel syndrome the neck and back problems became more severe. Claimant's testimony reflects that she began treating with Dr. Ricca in August 2004, with surgery being performed in April 2005.

The testimony of Mr. Robert Gray is included in this record through his October 30, 2006, deposition. (JX. #3). Mr. Gray has been the Safety and Training Coordinator for respondent #1 for 10 years. Regarding his duties and responsibilities in his employment position with respondent #1, Mr. Gray testified:

Well, uh, among - - among the hats I would be involved in would be new employee orientation where I would train the employees to the basic functions required for OSHA, and, uh, reporting injuries, illnesses, et cetera; the various work rules that we have both safety and general. Uh, I would also do the training for forklift treating and, uh, certification and that type of thing. In administering all the safety supplies as well as inputting all the information with regard to work - - work injuries or work compensation.

(JX #3, p. 4-5).

Regarding work-related injuries, Mr. Gray elaborated regarding his job responsibilities:

Well, uh, I would, uh, provide the individual with, you know, the means to get to the doctor. If they report an injury, the necessary paperwork that they would required to fill out such as the Form N for the state, and see that they are, you know, taken to the doctor in a timely fashion, of course, depending on the circumstances and emergency, et cetera. And following up with the insurance company to make sure that the - - the claim is filed with the insurance company. Also, appraising the department of the results of any injury investigation and - - and - - and diagnosis by the doctor with regard to what - - what, if any restrictions, et cetera, were in place. (JX #3, p. 5).

Mr. Gray testimony reflects that since the claimant has had several reported injuries over the years, and has reported a few of them to him he was sure that she was familiar with the policy of respondent #2 with respect to reporting injuries. Further, Mr. Gray testified that the claimant had a previous claim regarding her low back.

Regarding the claimant's June 2004, claim, Mr. Gray testified that the claimant either reported to him or to her supervisor that she was having pain in both of her thumbs and that it was getting progressively worse as she continued to work. As a consequence of the afore an appointment was scheduled on behalf to the claimant with Dr. Michael Lack, the occupational health doctor utilized by respondent #1. As a result of the claimant's visit to Dr. Lack, Mr. Gray testified:

Dr. Lack evaluated her and gave his diagnostic and stated that she need to be limited on power pinch grip or, you know, where she was, uh, so we make modification and removed her. I say we. The supervisors moved her from feeding pockets to a - - what we call sorting.

Well, sorting would be where you would have books - - completed magazines coming out of - - of the equipment or either the binder or the stitcher or even a polybagger as we call it, and they would come out having a - - a label - - a mailing label affixed to it or printed on it. They would be

sorted by zip cond, and it would be the responsibility of the person who is sorting to put those into a pile. Uh, I shouldn't say a pile but a stack based - - based on that zip, and they would come out in a sequence, and they would be - - they would be shingles, so she would sort of stack those books into a single pile whether it be - - it could be anywhere from two books to ten in a pile or stack I should say. (JX #3, p. 6-7).

Mr. Gray maintains that the claimant registered or made him aware of no other complaints or problems she was having during the above time period. Further, Mr. Gray denies that the claimant returned to him with any further complaints or work-related injury following the time she was last seen by Dr. Lack in July 2004.

Mr. Gray's office hours during the pertinent time period were from 6:00 a.m. until after 5:00 p.m., Monday through Friday. Regarding a general description of his work activities, Mr. Gray testified:

I generally made - - made at least one trip across the floor. The HR office is located at the rear of the plant, and, uh, we - - we received mail, interoffice mail and interplant mail as well as U.S. mail - - U.S. mail at the front. I would do a tour through the plant and visit with anybody that might have a question of concern, do an inspection-type visit as I walked across noting any safety issues that I - - that I wanted to be addressed, and I would do that at - - uh, generally once a day or twice a day. At least once a day, unless I was involved in training. (JX #3, p. 8).

Mr. Gray testified that he was regularly at work and did not have any extended absences until mid-December 2005 when he was diagnosed with cancer.

Mr. Gray testified that the claimant did not inform him when she begin treatment with a neurosurgeon. Mr. Gray's testimony reflects when he first became aware of the claimant having medical treatment with respect to her wrist:

Uh, I was made aware when she had come into the plant to talk to our Benefits Coordinator about her short-term disability, and at that point during the conversation apparently with the Benefits Coordinator, she told

him that it was a work-related issue, and he had her come to my office, and she told me that it was - - that she, uh, had carpal tunnel surgery, And it was because of work. (JX. #3, p. 9).

The claimant did receive some short-term disability benefits beginning in April 2005. Mr. Gray estimates that the claimant had been out on short-term disability for a period of time, two to three months at the time of his conversation with the Benefits Coordinator, Brian Winkle.

Mr. Gray denies that after the claimant's treatment/visit with Dr. Lack she returned to him and reported that further test disclosed carpal tunnel syndrome. Mr. Gray testified his standard procedure to a report by an employee of work-related carpal tunnel syndrome is to send them to company doctor for an evaluation. Thereafter, Mr. Gray testified that he would complete the required documentation and notify the insurance carrier. Regarding the insurance carrier and the role played by same, Mr. Gray testified:

Well, their [Travelers Insurance Company] role would be - - they - - they are a TPA for us, and, of course, we're quote/unquote self-insured, but they administer all our - - do all our claims and administer them. They would, uh, uh, investigate or - - investigate the claim as it's filed. If necessary, might individuals concerned; pay the bills; evaluate whether it was compensable claim; and proceed from there. (JX. #3, p. 12).

Mr. Gray testified that he was familiar with the claimant's prior workers' compensation claims and general health claims. Mr. Gray has never scheduled an appointment for the claimant to be seen by an orthopedist, neurosurgeon, or rheumatologist. Mr. Gray maintains that since 1996 to the present he has probably had five or six carpal tunnel syndrome cases presented to him. Mr. Gray elaborated:

Well, no, it wouldn't - - it wouldn't be a year. It might have been - - it might be ten for the ten years. I mean, and that's kind of a guesstimate without, you know, going through and looking at files. You know, I'd hate to - - because sometimes you get - - you get those claims, you know,

that are - - that can be or initially it appears to be that, and it turns out it's tendonitis or something depending on what the doctor determines. (JX. #3, p. 13-14).

The individuals described by Mr. Gray performed the same type work as the claimant. Mr. Gray's testimony concedes that in the printing field/industry that because of the nature of the work that is done with the hands, wrists and arms, there is a fairly high risk of a rapid repetitive motion typ injury. (JX. #3, p. 15).

Mr. Gray testified that he does not recall if the clamant continued to have problems after being assigned to the sorting job duties following the recommendations of Dr. Lack, however, to his knowledge she did not report continuing complaints to him. The job that the claimant was performing on June 21, 2004, entailed standing for long period of time, and also involving gripping/pinching/squeezing, as well as some pushing and stacking. All of the afore was repeated over the course of a day. Other physical maneuvers performed by the claimant included bending repeatedly, and lifting .

With respect the to specific job task of feeding pockets, a job performed by the claimant, the testimony of Mr. Gray reflects:

Feeding the pocket you would actually take the lift or stack of pages. We call them forms on books even.

And they would - - she would pick that up, and it's going to be approximately a, uh, uh, legal pad size or not a legal pad size but a letter size, an 8 ½ by 11, something in that nature or neighborhood, and the stack would be anywhere from four to six inches tall. She would pick that up off the pallet. There would be several, you know, several of them on a pallet and walk to the work station. Depending on which work station she was at, she would either drop them into a hopper or she would place them at an angle into what we call a stream feeder. (JX. #3, p. 17-18).

The claimant repeatedly used her arms to lift weights ranging up to 25 pounds in the above task

throughout the day. Mr. Gray described the job task of stacking off:

Stacking off would be where you would take the completed magazines either - - either in a bundle. Sometimes they would actually be loose stacks or a packing stack with a shrink wrap and placed them on a pallet stacking them or possibly into a carton and then placed a carton on a pellet, or they need to place in what we call mailbags. (JX. #3, p. 18).

Jogging maneuver entailed breaking the static bind by flexing so that the pages could be placed in the hopper to feed evenly. In describing a power grip, Mr. Gray testified:

Well, the power grip would be any time you pick up or lift something that, you know, of any consequence where you're going to have to take the hand and the hand and the fingers and the thumb and grip so that you don't lose control of it. (JX. #3, p. 19).

Mr. Gray that the power grip is an activity that could cause a rapid repetitive motion injury.

Regarding the sorting job, a position to which the claimant returned to after receiving medical treatment by Dr. Lack, Mr. Gray testified:

Basically, yes. The - - the magazine would be coming out of depending on whatever machine she was in but they would come out shingled generally, and by shingles, they're layered, and, uh, she would be looking - - he or she, whoever is doing the work would be looking at the zip or sorting number, and they would actually gather them into a stack based on that, and, uh, so it would allow for the postal people, uh, to segregate them and send them out appropriately. Uh, they would then have a backstop, so you would actually push them against there to square the bundles up. so they could either be strapped or wrapped, and they can sort anywhere from two to ten books in a stack. (JX. #3, p. 19-20).

Mr. Gray's testimony reflects that the claimant's back and shoulders would be affected by her work lifting and handling the mail bags. Mr. Gray confirmed the claimant's earnings relative to the number of hours she worked as well as overtime and hourly wage rate during the pertinent time period.

Mr. Gray concedes that once he received information that the claimant's complaints were

in the area of degenerative joint disease, he would have received a closure letter after the bill had been paid. (JX. #3, p. 22). Regarding any nexus between the claimant's low back complaint and her employment duties, Mr. Gray testified:

I have no knowledge of that issue, you know, other than the previous treatment that she had. I believe, one time that I took her to what was diagnosed as a back strain, but, you know, subsequent to that, I have no knowledge of where she was hurting. You know, so I don't know. I don't even now. I know that she's got complaints with her back, but I couldn't tell you where. (JX. #3, p. 24).

Mr. Gray testified that while respondent # 1 had employees with permanent restrictions, it does not provide permanent light duty to its employees. Regarding the use of a functional capacity evaluation in returning an employee to work, Mr. Gray testified:

We - - we have used in the past functional capacity exams whether it be a work related or non-work related, you know, to allow us to determine if that individual can perform the task with possibly some modification or accommodation, and, you know, that's going to be normally a department call, and that, you know, can we, uh - - you know, can - - can we have - - can we have - - does everybody gain from this, and, uh, you know, do we have reasonable employment opportunities, and we use that on that basis. (JX. #3, p. 37).

Respondent #1 employs approximately 750 employees with 12 departments. The jobs available at respondent #1 range from sedentary to heavy work. Mr. Gray's testimony reflects, regarding the afore:

Yes, they do. However, sedentary duty would be non-hourly - - generally, would be non-hourly jobs. In other words, they would be salaried or salaried time card. Our hourly jobs are normally going to be those individuals that are working in the plant and performing, uh, working on their feet. (JX. #3, p. 38).

The testimony of Dr. Gregory F. Ricca, a Jonesboro neurosurgeon, was obtained by deposition on May 22, 2006, and designated a part of the hearing record as Joint Exhibit #2. Dr.

Ricca provided medical treatment to the claimant's low back in the 1995. On October 18, 2004, the claimant was seen by Dr. Ricca with complaints of pain in the wrist, thumbs, forearms, elbow, shoulders and neck. The claimant did not provide a history of low back problems during the October 18, 2004, visit to Dr. Ricca. Dr. Ricca testified that while he had no recollection of the claimant providing a history of her condition was work-related, he had "very little recollection of the details" of the claimant's case, other than the information provided by the attorney relative to the deposition. As noted at the outset of his deposition Dr. Ricca is located in a different office than he was during his earlier contact with the claimant and did not have the medical records relative to the treatment he rendered to her.

Regarding the history provided to him by the claimant during the October 18, 2004, visit, the testimony of Dr. Ricca reflects:

Ms. Brown reported that she had pain in her wrist and thumbs as well as forearms, elbows, shoulders, and neck without a clear cause. She stated that, uh, sh wasn't sure whether or not the pain started distally and moved proximally or vice versa. She also reported occasionally getting shooting from her neck into her upper extremities. She relayed a history of, uh, right carpal tunnel release twice in the distant past and left carpal tunnel release once in the distance - - distant past by Dr. Schrantz. She was taking Vioxx, but she stopped taking it stating that, uh, her symptoms seemed to worsen around that time. Based on the notes I can't tell whether, uh, she stopped taking it because her symptoms worsened or her symptoms worsened after stopped taking it, and I believe the latter to be most likely the case. (JX. #2, p. 6-7).

Dr. Ricca explained the significance of the onset of pain being distally and moving proximally or vice versa:

Uh, there is actually some significance. For example, in carpal tunnel syndrome, the textbook tell you that people have pain and tingling in their hands, weakness that awakens them, and stays in the hands. In reality, that's not always true. Sometimes they'll have pain, tingling that

will radiate proximally from the wrists meaning starting at the wrist going towards the elbow on the forearms. Whereas, pain from the neck or shoulders tends to start in your neck and shoulders then radiate distally meaning down the upper extremities, so the origin of the pain and which way it radiates sometimes helps me determine the cause of their symptoms. (JX.#2, p. 8).

The claimant did provide a history to Dr. Ricca of having undergone carpal tunnel release two (2) times on the right and once on the left approximately twenty (20) years earlier under the care of Dr. Schrantz. There is no evidence of the claimant having been assigned an anatomical impairment rating relative to the earlier carpal tunnel release surgeries performed by Dr. Schrantz. Dr. Ricca does offer that the *AMA Guidelines Guides To Impairment* ascribes impairment ratings for various problems, and may have an impairment rating for carpal tunnel released.

Dr. Ricca next saw the claimant following the October 18, 2004, visit on December 2, 2004. Dr. Ricca testified, regarding the visit:

And it's stating that she returned for follow-up of neck pain, right upper extremity pain as well as pain into the left upper extremity and bilateral hand pain. She reported to me that her symptoms had improved with Celebrex but overall she still felt quite poor. She also reported burning pain in her low back and into the lower extremities worse on the right than the left. She also had some pain and numbness - - excuse me. Pain in the anterior lateral right thigh and numbness and tingling in the lateral right foot. My impression is that maybe her symptoms were related to fibromyalgia. (JX. #2, p. 10-11).

With respect to fibromyalgia, Dr. Ricca's testimony reflects:

Fibromyalgia, for those who believe in it, is a disorder involving the muscles where the body attacks your muscles, and it can cause painful muscles - - muscle aches. Some people say it's not real. A lot of rheumatologists, or the experts in this area, do believe it to be real. (JX. #2, p. 11).

During the December 2, 2004, visit Dr. Ricca ordered cervical and lumbar MRIs of the claimant. The lumbar MRI disclosed a grade 1 spondylolisthesis at L4-5 with bilateral foraminal stenosis, worse on the right than the left, and compression of the right lumbar 4 nerve root, all of which was consistent with the claimant's symptoms in the right lower extremity. The cervical MRI showed a loss of cervical lordosis, meaning a loss of the normal cervical curve consistent with muscle spasms. Further, the cervical MRI disclosed a mild bone spur formation or spondylosis, C3 through C6. No compression of the neural elements was observed. The testimony of Dr. Ricca reflects that nothing in the cervical or lumbar spine warranted surgical intervention at the time of the December 16, 2004, visit.

The claimant was next seen by Dr. Ricca on April 7, 2005. Dr. Ricca's testimony reflects that between the December 16, 2004, and April 7, 2005, visits, the claimant received treatment at the pain clinic under the care of Dr. Savu relative to her neck and back. Dr. Ricca testified, regarding treatment for the claimant's wrist complaints:

Between December 16th and April 2nd - - excuse me, April 7th, I do not see that there was specific treatments for her wrist other than the blocks by Dr. Savu. When you provide a patient with a steroid injection in the spine, it affects the entire body. It is absorbed by the blood and goes everywhere just like steroid pills will affect the entire body, so her cervical and lumbar blocks will help her symptoms in her hands. (JX. #2, p. 13).

Regarding the claimant's April 7, 2005, visit, the testimony of Dr. Ricca reflects:

Uh, she stated that her symptoms were intolerable. There are two reasons to proceed with surgery for a pinched nerve. The most important is neurologic damage, loss of nerve function, particular progressive loss of nerve function. If you have a pinched nerve and it's getting weaker and losing function, that needs to be taken care of promptly. The second reason is for pain or symptoms like numbness, tingling, or dropping objects, symptoms that are so bad they can't live with it, and they can't get better any other way. In this case, getting better any other way includes living with

the symptoms, keeping the hand elevated, the steroid shots for the low back should have helped it. Sometimes we put these people in a wrist sprint - - splint. Uh, Ms. Brown reported to me that her symptoms were intolerable, and she was ready to proceed with surgery. (JX. #2, p. 13-14).

With respect to the intolerable symptoms and whether there had been a progression, Dr. Ricca offered:

I can't tell. Sometimes they don't have to progress but after a while it just wears you down, and you finally say enough is enough. I'm ready to have surgery. (JX #2, p. 14).

On April 11, 2005, Dr. Ricca performed a carpal tunnel release surgery on the claimant's left wrist:

Based on my review of the operative notes, she had a lot of scar tissue at the carpal tunnel on the left around the median nerve causing marked compression of the nerve. (JX. #2, p. 15).

On June 8, 2005, carpal tunnel release surgery was performed on the claimant's right wrist. Dr. Ricca testified regarding his findings:

My notes indicate that she again has scar tissue around the nerve, but it was not severely com - - compressed.

Any time the body is injured the body repairs itself. Part of the repair process commonly is the formation of scar material particularly after surgery. Scar material is a very firm fibrous tissue, and after it forms over years, it progressively contracts, so it actually can squeeze a nerve. (JX. #2, p. 15).

The testimony of Dr. Ricca reflects that he reviewed the claimant's nerve conduction studies on her first visit of October 18, 2004. The September 2, 2004, nerve studies by Dr. South of the claimant showed severe right carpal tunnel syndrome and moderate left carpal tunnel syndrome. Dr. Ricca also had nerve conduction studies performed after he performed carpal tunnel release surgery relative to the claimant. Regarding the afore, Dr. Ricca testified:

I do not see the test, but based on my notes, it was done between July 26th, 2005 and August 23rd, 2005. My notes of August 23rd, 2005 states that the nerve test did confirm my impression of left ulnar nerve entrapment at the elbow. (JX. #2 p. 17).

The finding regarding the ulnar nerve was consistent with the symptoms that Dr. Ricca had noted earlier, numbness and pain in the distribution in the left ulnar nerve. After comparing the prior September 2, 2004, diagnostic studies with those of August 23, 2005, Dr. Ricca testified:

Without the other test, the second test, it's hard for me to tell for sure, but based on my review of the records, there is something new between the test of September 2nd, 2004 and the test done prior to her office visit of August 23rd, 2005, and that new find would be left ulnar nerve entrapment at the elbow. (JX. #2, p. 18).

Regarding the cause or onset of an ulnar nerve entrapment, Dr. Ricca's testimony reflects:

Most of the time we do not ascribe a particular cause. It can be from leaning on one's elbows frequently. It can be from sleeping on supine where the elbow - - where the ulnar nerve rubs on the bed. Some people wake up with numbness in the ulnar nerve distribution. Hanging one's arm out the window sometimes can irritate the ulnar nerve in the mid-arm. Trauma to the elbow can be, but that's extremely rare. Most commonly I believe the fibrous band over the ulnar will thicken with time, and, for some people, it's significant enough to cause compression of that nerve. (JX. 2, p. 19).

In reviewing a January 24, 1995, nerve conduction study performed on the claimant by Dr. Goza, Dr. Ricca testified that there was a "tremendous difference" between the same and the one performed prior to the 2005 surgeries:

This one just showed very mild evidence of carpal tunnel syndrome on the right. It showed some evidence of nerve dysfunction to the muscle at the base of the thumb on the right called the opponens pollicis, but it did not show the severe nerve dysfunction indicated on the studies prior to my doing surgery on Ms. Brown. (JX. #2, p. 20).

The claimant was seen by Dr. Ricca on September 26, 2005. Regarding her condition at the time of the visit, Dr. Ricca testified:

At that time, she reported to me that she still had a fair amount of numbness in the left hand. Her examination showed mild tenderness to palpation of the ulnar nerve on the left at the elbow. Her sensation was diminished in the left ulnar nerve distribution and function was intact. My impression was her greatest problem at that point was stress. (JX. #2, p. 20).

Dr. Ricca observed that the claimant was the verge of decompensating - - a nervous breakdown.

The claimant was last seen by Dr. Ricca on November 7, 2005:

She reported that she still had quite bit of problems with left hand numbness, tingling, weakness as well as pain in the left forearm. She also Reported symptoms that I would call or describe as dysethesia.

Which, uh, is an abnormal sensation from the nerves. When she would touch thing with her left hand lightly, she described it as rubbing against sandpaper. She also reported she had significant difficulty using her left hand because of pain particularly pain around the left thumb. She had a diffused aching pain in her left forearm. (JX. #2, p. 21).

Dr. Ricca explained the term hyperpathia as an abnormal nerve response where normal sensations like gentle touch will send pain information to the brain - - an excessive abnormal response to nerves, which cannot be objectively tested. Dr. Ricca further testified regarding his plan for the treatment of the claimant:

I felt based on her history and examination that she unable to use her left hand or left upper extremity essentially, and that she had severe depression, I felt she reached MMI meaning maximal medical improvement such as I did not expect her hand function to improve further, and, uh, I released her from my care. I also increased her Lexapor to 20 milligrams daily.

My impression based on review of records was I felt when I saw her last that she was not able to obtain gainful employment of any kind and so I recommended she not work. (JX. #2, p. 22).

Dr. Ricca elaborated further regarding his November 7, 2005, assessment of the claimant:

Base on my review of the records, she probably could work with her right arm. I'm - - I believe there was more to my decision than simply

using the right upper extremity or answering the phone. I think a lot of it had to do with, and I'm - - I'm speculating, because I don't remember I wasn't - -

You know, I'm speculating because this is going back several months now, but I suspect a lot of my decision, also, had to do with her depression. In addition, I believe my decision also had to do with the fact that she has now had three carpal tunnel surgeries on the right. She has had two carpal tunnel surgeries on the left. She had an ulnar nerve decompression on the left and repetitive use or even frequent use of her hands such as answering telephones would put her at high risk for recurrent surgery. She has had six surgeries for nerve decompression on her two upper extremities, and I think that was most likely - - actually, more I think of it I think that was most likely the cause for my recommending against further work. (JX. #2, p. 23).

Dr. Ricca's testimony reflects that while the claimant has not had the ulnar nerve surgery, it is his belief that she should base on his review of the records. Dr. Ricca testified that he did not have an opinion within a reasonable degree of medical certainty as to the cause of the claimant's carpal tunnel syndrome.

Dr. Ricca testified regarding the difference between the carpal tunnel syndrome complaint and the left ulnar nerve entrapment:

It differs in the location and the nerve that is compressed. The carpal tunnel syndrome involves the median nerve at the wrist through - - as it passes by the carpal bones hence the name carpal tunnel syndrome. It's a little tunnel. The ulnar nerve problem in this case is at the elbow. The nerve itself goes through a groove interestingly named the ulnar groove along the medial elbow where commonly can get compressed. Both problems involve compression of nerves. Both problems can cause pain, numbness, tingling, and weakness in the distribution of the nerve. By distribution of the nerve, I mean, what muscles and skin that nerve feeds. The median nerve for the carpal tunnel syndrome feeds the thumb side of the palm of the hand and fingers and works for muscles of the hand. The ulnar works all the other muscles of the hands and feeds the pinky side of the - - of the hand. (JX. #2, p. 30-31).

The November 7, 2005, office note, Dr. Ricca noted an error, and in clarifying same testified:

First, let me back up. Leave that fragment. Let e back up. The note of November 7th, 2005 has an error in that it says that she is to follow-up of redo left carpal tunnel release in June 8th, 2005. That was a right carpal tunnel release.

So, therefore, the error may be on the left-hand symptoms as opposed to the right-hand symptoms. Secondly, the third paragraph indicates that she had hyperpathia in the left thumb. Regardless of whether it was the left thumb or right thumb, that is the median nerve distribution, which fits with the carpal tunnel syndrome.

So I believe she actually had symptoms from both the carpal tunnel syndrome and the ulnar nerve entrapment as residual symptoms. (JX #2, p. 32).

The ulnar nerve problem is solely on the left. Further, Dr. Ricca testified that he cannot causally connect the ulnar nerve problem with the carpal tunnel problem of 2004.

Dr. Ricca testified that overall he believes that the functional capacity evaluation have great value in helping determine physical capabilities of an individual, however note that they are very much dependant upon the person who does the exam and actually evaluates the patient. In the instant claim, Dr. Ricca testified that a FCE would be helpful.

Dr. Ricca testified that the carpal tunnel syndrome that he treated the claimant for was a new injury as opposed to an aggravation of the previous condition for which she was treated. When presented with a description of the claimant's job duties relative to lifting, bending, as well as repetitive flexion of her wrist and upper extremities, Dr. Ricca testified that the same might cause some low back problems in the claimant as well as carpal tunnel syndrome. (JX. #2, p. 37-38).

Dr. Ricca testified that ulnar nerve palsy is consistent with a history of rapid repetitive motion of the elbow. (JX. #2, p. 45). Dr. Ricca's testimony reflects, regarding the afore:

I - - I don't know if I can say it's more plausible. I think it is

clearly reasonable that a person who is lifting, tugging, pulling, using their arms, flexing their elbows repetitively could conceivably and actually very easily develop ulnar nerve entrapment at the elbow. There's a fibrous band over the ulnar nerve. That's involved in the elbow function. As you're moving the elbow more and more and more, it's reasonable to expect that band, that fibrous band, to thicken. As that fibrous band thickens, it compresses the ulnar nerve. (JX. #2, p. 45).

Dr. Ricca's testimony reflects that medical records reflects that the claimant was seen or had a test performed that showed a reversal of lordotic curve prior to 2004, would suggest that she had prior neck problems or spasms. (JX. 2, p. 47). Dr. Ricca also noted that at the time he treated the claimant on February 27, 1995, she complained of some burning type and radiating type of problems within the low back and lumbosacral region as well as into the buttocks and posterior thighs. Further, in an April 11, 1995, report, Dr. Ricca felt that the claimant's symptoms were related to facet disease at L405 and L5-S1 bilaterally. Facet disease refers to the joints on the back of the spine. Spondylolysthesis is generally a degenerative type condition. Dr. Ricca does offer, in terms of the claimant's work activities to back complaint:

Based on the information this other gentlemen presented to me, I would actually think that the work activities would have a higher percentage of cause of her back pain than the natural degenerative process. I explained to patients and families that there are two things that wear out a spine. Genetics and lifestyle. Genetics we can't alter. Some people have bad spines. Some people are built with spines I described them as bulldozers. some people are built with Toyotas and the like. Some people can beat up their spines all their lives and not have any problems. Some people do the least little things and the spine falls apart, so genetics is a major factor. I cannot say for sure that genetics is not a major factor here. However, people who beat up their spines. People who do repetitive bending, twisting, straining, people who are overweight, people who smoke, people who sleep on soft mattresses, all these together wear out the spine more quickly. The work activities that I heard described earlier with lifting it seems like thousands of bags of paper and magazines and moving and twisting and struggling I think would have a significant impact on the spine. I cannot tell you within a medical degree of certainty what the percentage number is. I don't think

anyone can do that. (JX. #2, p. 51).

With respect to the treatment received by the claimant in 1995, relative to her low back, Dr. Ricca acknowledged that he did not assign an impairment rating regarding the facet arthritis at L4-5 and L5-S1. On September 14, 1995, the claimant was seen by Dr. Terrence Braden, D.O., relative to her low back. Claimant was not provided any physical restrictions or anatomical impairment. Dr. Ricca noted that he would defer to Dr. Braden on his opinion as to what he was seeing at the time. (JX. #2, p. 54).

While the medical in the record reflects that the claimant received treatment for her wrists, knee, low back and neck, dating back as far as September 1982, which she attributed to her employment, there is a noticeable gap between following a March 2, 2000, visit to Dr. Stephen Golden until June 20, 2004. (JX. #1, p. 1-36). The June 21, 2004, office note of Dr. Michael Lack, relative to the claimant reflects, in pertinent part:

Pt states that she had 2 previous carpal tunnel surgeries on the R hand and 1 on the L, the last one being in 1984. Pt states that she began to have pain in her wrist about the end of May. Pt states that she mostly has pain with gripping and she often has a throbbing pain with inactivity. (JX. #1, p. 40).

The claimant's complaint was assessed by Dr. Lack during the June 21, 2004, visit as follows:

DOCTOR'S REPORT: Pt has worked at Quebecor for 27 years. She has pain in both hands with left worse than right. The pain in the left hand radiates up her left arm. Most of the pain is in the base of the thumb. There is some swelling. Pt has no numbness or tingling in her hand. Pain has taken otc supplements and skelaxin. Pain began off and on but last week has become permanent. Pt rates her pain 7/10. Pt was able to drive to the office. Pressure with thumb causes pain.

Pt has been in good health previously. She does have pain in her knee and back. Pt takes nexium and ditripan.

Pt has positive grind test left and right. She has some pain in the first extensor compartment on the left. No swelling and not hot.

Bilateral degenerative cahnges [changes] in both hands. X-ray to be read by the radiologist.

Problem work related? Undetermined

Comments: Pt with DJD. DJD not work related but no doubt work increases pain in the thumbs.

* * *

RESTRICTIONS

Other: Pt should not jog or feed pockets. Pt should not perform any activity that uses power pinch. (JX. #1, p. 42).

In his Initial Narrative Report, relative to the June 21, 2004, visit of the claimant, Dr. Lack identified the date of injury as May 4, 2004. The report also reflects, in pertinent part:

ASSESSMENT: It is not clear that this is related to her work since there has been no time or place of injury. She certainly does have degenerative joint disease. The degenerative joint disease itself is not work-related, but there is no doubt that the work with pressure on the thumbs does aggravate her particular problem. (JX. #1, p. 43).

The claimant was again seen by Dr. Lack on July 5, 2004. The records generated as a result of the afore visit, reflects in pertinent part:

Pt states that her R hand feels better but she can not hold a coffee cup or puts pressure on it. In her L hand, she still has pain at the base of her L thumb and she has pain in her forearm.

TREATMENT:

Pt should avoid power pinch and activity that causes pain. (JX. #1, p. 45).

In a July 8, 2004, hand written response to an inquiry by respondent-carrier #1, Dr. Lack opined that he did not believe that the claimant's work aggravated the degenerative joint disease,

however exacerbated her pain. (JX. #1, p. 48).

The claimant sought medical treatment under the care of her family physician, Dr. Sanders Mckee, for her complaints regarding her upper extremities after the compensability of same was denied by respondents #1. On September 2, 2004, claimant underwent EMG/NCV studies which disclosed bilateral carpal tunnel syndrome. Thereafter she was referred to Dr. Gregory F. Ricca, and came under the care and treatment of same. The course of the claimant's medical treatment under the care of Dr. Ricca is detailed in his May 22, 2006, deposition. (JX. #2).

Pursuant to the December 16, 2004, visit of the claimant to Dr. Ricca a consultation was had with Dr. Calin Savu relative to her cervical and lumbar spine complaints. (JX. #1,p. 62). On March 7, 2005, claimant was evaluated by Dr. Savu at the Pain Center, in Jonesboro. The March 7, 2005, report of Dr. Savu reflects, relative to the claimant, in pertinent part:

Ms. Brown is a very pleasant 54-year-old female with a long-standing history of low back pain as well as neck and shoulder pain. She states that she has had pain in her neck and lower back for several years, on and off, with no specific initiating event. Her pain in her lower back became severe enough approximately 3 years ago that she did seek treatment. She was told at that time that she did have bulging disks but was not a surgical candidate. She did undergo a series of epidural steroid injection in a clinic in Memphis. She got a brief respite of relief with each injection, however, the pain did return within approximately a month after her last injection. . . . It appears that activity is a major contributor to her pain with lifting, bending, straightening up and twisting being major offenders. . . .

Ms. Brown also complains of neck pain that radiates into both shoulders. She describes this pain as deep-seated ache and burns into both shoulders. The pain is also activity related with turning and looking up being the worst offenders. She does describe some numbness and tingling in her left hand, however, she states she feels that this is related to previous surgeries that she had for carpal tunnel syndrome. (JX. #1, p. 63).

On March 11, the claimant underwent right lumbar medial branch blocks at L3-4, L4-5, and L5-S1, under the care of Dr. Savu. (JX. #1, p. 66). Claimant returned to Dr. Ricca on April 7, 2005, and thereafter underwent the carpal tunnel release surgeries.

The record reflects that on September 26, 2006, the claimant was evaluated by Dr. Fereidoon Parsioon, at Pheonix Neurosurgery, at the request of respondents #1.(JX. #1, p. 85-87). In accordance with his evaluation of the claimant Dr. Parsioon referred her to Wesley Neurology Clinic for electrophysiologic studies. The November 21, 2006, report of Dr. Tulio E. Bertorini, relative to the test results reflects, in pertinent:

CONCLUSION

_____ This is essentially a normal study. However, there was some residual slowing of the right median motor and sensory nerve as well as the left ulnar sensory nerve. This is more than likely due to chronic changes in these nerves. The EMG examination was normal. (R#1,X#1, p. 1).

The claimant also underwent a Functional Capacity Evaluation at Functional Testing Center, Inc., on November 27, 2006, as a part of the evaluation of Dr. Parsioon, which concluded:

Ms. Brown underwent a functional capacity evaluation with unreliable results for effort. Ms. Brown put forth inconsistent effort and demonstrates inconsistencies with inappropriate illness responses.

Overall, Ms. Brown demonstrated the ability to perform work at least at the LIGHT Physical Demand Classification as determined through the Department of Labor for an 8-hour day. Due to the unreliable nature of this FCE, her true functional abilities and limitations remain unknown. (R#1,X#1, p. 5).

In a December 7, 2006, report, Dr. Parsioon submitted his professional opinion after reviewing the medical records of the claimant along with the FCE results. The report reflect the opinion that the claimant “is not totally disabled” and can perform work in the light physical demand classification. Dr. Parisoon also opines that the claimant does not need any further

surgical procedures - - carpal tunnel syndrome, ulnar neuropathy, lumbar or cervical. (R#1, X #1, p. 17).

In a July 31, 2006, correspondence, Mr. Phillip M. Minyard, M. Ed., a rehabilitation consultant, opined that the claimant had limited transferrable skills and that based on his review of the medical records and the July 3, 2006 Affidavit of Physician, authored by Dr. Ricca, had lost access to all but a limited number of vocational opportunities. (R#1, X#2, p. 8-9). Finally, the record reflects the presence of a July 3, 2006, Affidavit of Physician, by Dr. Ricca reflection his opinion that the clamant is totally and permanently disabled from her injuries, pursuant to *The AMA Guides to the Evaluation of Permanent Partial Impairment*, 4th Ed. (JX. #1, p. 81-84).

After a thorough consideration of all to the evidence in this record, to include the testimony of the witnesses, review of the medical reports and other documentary evidence, application of the appropriate statutory provisions and case law, I make the following:

FINDINGS

1. The Arkansas Workers' Compensation Commission has jurisdiction of these claims.
2. At all times pertinent, to include June 7, 2004, and June 21, 2004, the relationship of employee-employer-carrier existed among the claimant and respondents #1.
3. The claimant earned an average weekly wage of \$459.10, which yield compensation benefits rates of \$306.00/\$230.00, for total/permanent partial disability.
4. On or about June 7, 2004, the claimant sustained bilateral carpal tunnel syndrome injury arising out of and the course of her employment, which required medical treatment, to include surgeries and rendered her temporarily totally disabled commencing April 11, 2005 and

continuing through November 7, 2005, and correspondingly entitled to temporary total disability benefits.

5. The claimant has failed to sustain her burden of proof by a preponderance of the evidence that she sustained a injury to her cervical spine and to her lumbar spine arising out of her employment with respondents #1, pursuant to Ark. Code Ann. §11-9-102 (4)(A)(ii)(b).

6. The claimant reached the end of her healing period on November 7, 2005, relative to her bilateral carpal tunnel syndrome injury.

7. The claimant has failed to sustain her burden of proof by a preponderance of the evidence that she has been rendered permanently and totally disabled as a result to her compensable scheduled injury of bilateral carpal tunnel syndrome.

8. Respondents #1 shall pay all reasonable hospital and medical expenses arising out of the claimant's injury of June 7, 2004, and June 21, 2004.

9. Respondents #1 have controverted the payment of all workers' compensation benefits in this claim subsequent to July 6, 2004.

CONCLUSIONS

The claimant was employed by respondent #1 from 1977/78 until April 2005. Claimant asserts that she suffered injuries to her neck, low back and upper extremities within the course and scope of her employment with respondent #1 which has rendered her permanently and totally disabled. Claimant seeks corresponding temporary total and permanent total disability indemnity benefits as well as medical benefits. Respondents #1 dispute the compensability of the claimant's claims. Both the Second Injury Fund and the Death and Permanent Disability Trust Fund have been joined as parties to these claims. The contentions of the parties are as set forth in

their responsive filing to the Pre-hearing Questionnaires.

The present claims are governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of injuries having been sustained subsequent to the effective date of the afore provision.

Neither of the injuries for which the claimant seeks workers' compensation benefits is the product of a specific incident. The evidence preponderates that the claimant received medical treatment relative to both her lumbar spine and cervical spine prior to June 7, 2004. Further, diagnostic studies relative to the afore area of the claimant's body disclosed objective findings. The evidence does not preponderates that injuries relative to the claimant's neck and low back arose out of and in the course of her employment. Further, it is noted that at the time of he claimant's October 18, 2004, visit to Dr. Ricca, she did not register complaints relative to her low back. While the claimant did register complaint relative to her neck, the evidence reflects that the statutory provision in place required the same to be caused by rapid repetitive motion. The claimant had previously pursued a workers' compensation claim regarding a low back injury in the employment of respondent.

The claimant has sustained her burden of proof by a preponderance of the credible evidence that she sustained bilateral carpal tunnel syndrome arising out of and in the course of her employment with respondent #1, which was diagnosed pursuant to the September 2004, EMG/NCV studies of Dr. South. The credible evidence reflects that the claimant job duties entailed hand-intensive rapid repetitive activities. Further, the credible evidence reflects that upon receiving the results of the September 2004, EMG/NCV studies, claimant notified appropriate supervisory personnel of respondents. As of July 6, 2004, respondents #1

controverted the compensability of the claimant's bilateral carpal tunnel syndrome.

Medical treatment rendered to the claimant under the care of her family physician, Dr. Sanders Mckee, as well as referral therefrom relative to the claimant's bilateral carpal tunnel syndrome, was reasonable, necessary and related to the claimant's compensable injury, and for which respondents #1 are liable, to included the surgical procedures under the care of Dr. Gregory Ricca. The claimant was also rendered temporarily totally disabled commencing April 11, 2004, and continuing through the end of her healing period on November 7, 2005. Respondents #1, have controverted these claims.

The claimant sustained compensable scheduled injuries in the form of bilateral carpal tunnel syndrome. While Dr. Ricca offered that the claimant is in increase risk of recurrent CTS, he does provide a anatomical impairment relative to the surgical procedures he performed in the treatment of the claimant compensable bilateral carpal tunnel syndrome. The claimant underwent a functional capacity evaluation and EMG/NCV studies subsequent to her last examination by Dr. Ricca on November 7, 2005. Further, the claimant was evaluated by Dr. Parsioon subsequent to her contact with Dr. Ricca. No impairment rating has been generated relative to the claimant's bilateral carpal tunnel syndrome. *Singelton v. City of Pine Bluff*, ___ Ark. App. ___, ___ S.W.3d ___ (December 6, 2006). Further, the credible evidence reflects that the claimant is capable of performing work in the light physical demand classification. Accordingly, the claimant has failed to sustain her burden of proof by a preponderance of the evidence that she has been rendered permanently totally disable from engaging in gainful employment. *McDonald v. Batesville Poultry Equipment*, 90 Ark. App. 435, ___ S.W.3d. ___ (2005).

AWARD

Respondents #1 are herein ordered and directed to pay to the claimant temporary total disability benefits at the weekly compensation benefit rate of \$306.00, for the period commencing April 11, 2005, and continuing through November 7, 2005, as result of her compensable bilateral carpal tunnel syndrome of June 2004. Said sums accrued shall be paid in lump without discount.

Respondents #1 are further ordered and directed to pay all reasonable, necessary, and related medical, hospital, nursing and other apparatus expenses growing out of the claimant's compensable bilateral carpal tunnel syndrome injury of June 2004, to include medical related travel.

Maximum attorney fees are herein awarded to the clamant's attorney on the controverted indemnity benefits herein awarded.

This award shall bear interest at the legal rate, pursuant to Ark. Code Ann. § 11-9-809, until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE