

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F312299 (11/03/03)**

<b>TINA CARTER, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>EMERSON ELECTRIC CO., SELF-INSURED EMPLOYER</b>	<b>RESPONDENT</b>
<b>SEDGWICK CLAIMS MANAGEMENT SERVICES, INC. , TPA</b>	<b>RESPONDENT</b>

**OPINION FILED AUGUST 2, 2007**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on June 1, 2007, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE PHILIP M. WILSON, Attorney at Law, Little Rock, Arkansas.

Respondent represented by the HONORABLE DONIS B. HAMILTON, Attorney at Law, Paragould, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted in the above style claim to determine the claimant's entitlement to additional workers' compensation benefits. On March 27, 2007, a Pre-hearing conference was conducted in this claim, 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 as Commission Exhibit #1.

The testimony of Tina Carter, the claimant, Jeff Carr, James Richardson, and John McCollum, coupled with medical reports and other documents comprise the record in this claim.

## DISCUSSION

Tina Carter, the claimant, with a date of birth of March 19, 1960, has an eight grade education, however has no difficulty reading or writing. Claimant commenced her employment with respondent on December 12, 2000.

On November 3, 2003, claimant sustained an injury to her neck while performing employment duties which was accepted as compensable by respondent. At the time of the injury claimant worked on the end shield final assembly. In describing the details of her job duties, the claimant testified:

We take end shields, raw ones and fill them up with various widths and bearings and oil and several different parts and put them on the line for the motors. And we actually physically hand them onto another assembly line for the motors to assemble on. (T. 20).

The testimony in the record reflects that the job performed by the claimant was an assembly line type job which involved continuous use of her hands.

Claimant testified that she was injured in January 2004. In describing the mechanics of the injury, claimant's testimony reflects:

I just, we were on light duty in the bathroom and I had to keep my medication in a locker. And I was in this like type chair like this, and I just reached over to get it and the chair just done a flip upward and I fell on my right shoulder. I was taken to the doctor. (T. 21).

Claimant was initially seen by Dr. Noel, and later by Dr. Shedd. Claimant testified that she was subsequently seen by Dr. L'Heureux. The testimony of the claimant reflects that treatment by the afore physicians was directed toward her shoulder and neck. The testimony of the claimant reflects that subsequent treating and or examining physicians included Dr. Lovell, Dr. Morelli, as well as Dr. Shotts, Dr. Chan and Dr. Ricca.

Claimant's testimony reflects that she received epidural steroid injections in her neck under the care of Dr. Gera, a pain management specialist, and Dr. Lovell performed surgery on her neck. The testimony of the claimant reflects that she later obtained a change of treating physician to Dr. Harold Chakales. Claimant asserts that Dr. Chakales has recommended a surgical procedure and had directed that she remains off work. Claimant's testimony reflects that she is willing to undergo the treatment recommended by Dr. Chakales, which is carpal tunnel release surgery. The testimony of the claimant reflects that Dr. Chakales is recommending the carpal tunnel release surgery in an effort to relieve her symptoms with a positive result obviating the need for further cervical surgery.

Claimant testified that she learned that she had carpal tunnel syndrome following an EMG study which was performed at the direction of Dr. Lovell. Claimant explained the basis for the decision to obtain the afore study in light of her chief complaints being compensable injuries to her neck and shoulder:

Yes, on my hand. On my right arm. It was going through some kind of tremors. And he was trying to find out the source and the reason because he done the nerve surgery. And that's when he said, you know, I have - - (T. 23).

Claimant acknowledged that she has never filed a workers' compensation claim with the Arkansas Workers' Compensation Commission asserting that her carpal tunnel syndrome was work-related.

Regarding the termination of her employment with respondent, the testimony of the claimant reflects that she was released to light duty work with a 20 pound lifting restriction relative to her acknowledged work-related injury. Claimant asserts that upon returning to work

with the restriction she was placed in her regular end shield job. While the claimant's regular job duty entailed assembly line work, approximately three to four times a day the position required that she lift up to 30 pounds in doing the job. Claimant maintains that there was not always someone present to do the lifting for her, and, as a consequence, she did the lifting which caused her physical difficulty. Claimant's testimony reflects that she complained to her supervisors, Tommy Cooper and David Jones, about the physical difficulty resulting from the lifting in excess of the 20 pounds, as well as to the plant nurse and doctor.

Claimant asserts that neither the restrictions nor her job duties were changed after she relayed her complaints to supervisory personnel. Claimant testified:

No. I took the letter in and asked them several times and I still stayed on my same 40-hour job until I could not take it no more. (T. 26).

The testimony of the claimant reflects that the plant nurse was called to her work station due to the physical problems that she was experiencing:

Yes. A couple times she had to take me to the hospital and to Dr. Noel's office. And that was twice off the line and twice I took myself. (T. 26-27).

Claimant explained that she was experiencing severe pain and headaches at the time she had to stop working and go to the doctor. The testimony of the claimant reflects that she was taking medications [Hydrocodone, Xanax, Triazedone, Symbalta, Topomax] at the time. Due to the side effects of some of the medicines, which included dizziness, claimant testified that she would not take them until she arrived at work because she could not drive on them. Claimant explained that in working after having taken the medicine, she would sit as she discharged her duties.

Claimant's testimony reflects that she continued to attempt to work for respondent

through 2005, although she was not provided job duties within her medical restrictions.

Regarding the May 10, 2005, letter which respondent asserts was her voluntary quit, claimant explained that she had not work for two months prior to the letter. Claimant added that during the two month period preceding letter she receive neither temporary total or permanent partial disability benefits. Claimant's testimony reflects that she last performed job duties on March 10, 2005. Claimant also explained why she ceased working on March 10, 2005:

Because I was trying to get a doctor to find out what was wrong with me. I was under Dr. Shotts, Dr. Chan, Dr. Savu and Dr. Gera's - - well, it was Dr. Gera, Dr. Shotts, Dr. Chan at that time, I was under their care. (T. 28).

Claimant maintains that she was physically unable to continue performing the job. Regarding her areas of physical complaint, claimant testified:

My neck, my hands, numbness, severe headaches, couldn't sit or stand for long periods of time. No lifting, no pushing, no pulling. My doctor said absolutely not, not to go back. (T. 29).

Claimant subsequently came under the care and treatment of Dr. Chakales.

Claimant acknowledged that she was initially injured on November 3, 2003, when while lifting a bucket above shoulder level she experienced pain in both her neck and shoulder.

Claimant was seen by Dr. Stacy Noel, the respondent-designated medical provider, in connection with the injury. Both Dr. Noel and Dr. Shedd were respondent-designated medical providers.

Approximately two months, January 2004, claimant was in the ladies restroom/locker room sitting in a chair when she reached over to her side to retrieve her medication and fell over in the chair hurting her shoulder.

The testimony of the claimant reflects that Dr. Lovell performed cervical disc surgery at

the end of January 2004, approximately two months following the initial injury. Following the surgery by Dr. Ricca, claimant testified that she was followed by Dr. Morelli and then Dr. Ricca.

Regarding the numbness in her arms, claimant's testimony reflects:

I told Dr. Lovell, well Dr. L'Heureux actually and Dr. Noel because when I lifted the bucket my hands went completely numb. And I had to call the girl over there to help me because the bucket was fixing to go into the machine. And I lost feeling. (T. 32-33).

Claimant testified that she lost the feeling in her hand because to the nerve problem.

Claimant was subsequently seen by Dr. Ricca and Dr. Gera, a pain management physician. Claimant acknowledged that she was seen by Dr. Ron Schechter on July 26, 2005, relative to her shoulder complaint. With respect to Dr. Schechter claimant explained the he could not do anything because the injury was a part of the workers' compensation claim, and she had to go through "workman's comp".

Claimant denies that she has any problem with abuse of pain medication, or that any of her doctors have discussed the issue with her. Claimant concedes that some of the doctors have refused to prescribe any additional pain medication for her.

Claimant acknowledged that following her surgery she was taken off of her regular job on the assembly line and give the job in the bathroom. With respect to the duration of the restroom light duty claimant testified:

I believe until, what Dr. Lovell done was one, two, three and then the fourth week so many hours, like, two, four, six and then I work myself up to eight hours. What I did was, I'd go work two hours on the line and then go back to the bathroom. The next week I'd work four hours on line; I'd go back to the bathroom. That was the last time I was on light duty until Dr. Gera put me on light duty. That was around the end of February, the first of March. And he had a weight limit of 20 pounds, I believe, but I was still on the line. (T. 35).

Claimant also offered that in August 2004 she was placed on light duty by Dr. Noel. As of the date of the hearing the testimony of the claimant reflects that her medications consisted of Lyrica, Endocet and Tizanidine, for pain and nerve damage.

Employees of respondent are required to carry an identification badge. Claimant acknowledged that she sent her mother-in-law, Mrs. Sharon Carter, in to see the personnel manager to turn in her badge. The testimony of the claimant reflects that she had not worked for respondent for a month prior to sending her employee identification badge. Claimant acknowledge receiving a letter from Mr. McCollum, the chief assistant Human Resources Manager. The letter reflected that it was the understanding of Mr. McCollum that the claimant had resigned effective May 10, 2005. Further, claimant concedes that she had taken no action to notify respondent of anything to the contrary.

Mr. Jeff Carr, a production supervisor for respondent, testified that he was familiar with the claimant and that he was aware of her initial work-related injury, which was reported and required medical care. Mr. Carr's testimony reflects that he recalls the claimant returning to work and being placed on light duty, however he does not recall her being place back in her regular job on the line, noting that at some point during that time period he switched shifts. Mr. Carr was present when the claimant returned to work wearing the neck brace.

Mr. Carr testified that the job performed by the claimant on the assembly line was hand intensive. Further, the testimony of Mr. Carr reflects that about four times a shift someone would have to lift something weighing between 20 and 25 pounds. Mr. Carr explained:

That, actually there was a person that was there, utility operator, that did that. But there was times that they did, you know, do that on their own. That was, you know, in their job description or whatever that they

had to fill up bins. (T. 12).

Mr. Carr testified that he did not recall the claimant ever complaining to him about problems with pain, numbness or difficulty with her hands or arms. Mr. Carr was the claimant's supervisor at the time of her initial injury of having hurt her neck on November 3, 2003. At the time of the initial injury claimant relayed the injury as having been the product of having lifted a bin at shoulder level or above and her neck hurting.

Mr. James Weldon Richardson testified that he was aware of the claimant's neck injury which was sustained during her employment with respondent. Mr. Richardson's testimony reflects that he saw the claimant when she returned to work following her injury and that he is familiar with the job she was doing at that time. Regarding the lifting task of the claimant's regular job Mr. Richardson testified:

Five gallon buckets of what they call perm-a-wick (phonetic) which is a, like a foil stuff they put in the bearings to keep them oiled and a box of bearings, what they call self-lining bearings.(T. 15).

Mr. Richardson's testimony reflects that a box of the bearings weigh thirty (30) pounds. Mr. Richardson was aware that the claimant was at one point released to restricted duty, and recalled her working on a line while wearing a neck brace. Mr. Richardson testified that if the claimant's restriction included lifting no more than twenty (20) pounds she would not be able to do the job within the restriction. Mr. Richardson's testimony reflects an instance when the claimant was in severe pain and dizzy and he had to get the nurse for her. Claimant was taking medication at the time.

On cross-examination Mr. Richardson testified that the claimant's initial injury was to her upper torso. Mr. Richardson also testified that he recalled the claimant complaining about pain

in her hands, arms, and lower arms at work before the accident of November 3, 2003. Mr. Richardson explained that the claimant complained of her arms and wrists going numb. Mr. Richardson's testimony reflects that at the time the claimant complained of numbness in her arms and wrists it was not in the presence of a supervisor. Mr. Richardson testified that due to the nature of the job, rapid and repetitive, it is common for people to have wrist numbness and pain. (T. 18).

Mr. John McCullom, Senior Human Resource Specialist at respondent's Paragould facility, testified that his job duties entailed administrative, employee relations, workers' compensation, and safety. Mr. McCullom has worked for respondent for thirty (30) years. Mr. McCullom held the same employment position in 2003 at the time of the claimant's injury. Mr. McCullom testified regarding the action taken following the claimant's November 3, 2003, injury and release to return to work:

I just, from memory, I remember that she did go back to work and that she was on alternate duty for a while. (T. 41).

Mr. McCullom did not specifically recall what the claimant's assigned job duty was prior to the time that she sent her employee identification badge in on May 10, 2005. Mr. McCullom testified that the claimant did not make a claim for difficulties associated with carpal tunnel at any time prior to May 10, 2005. Claimant has not worked for respondent since May 10, 2005.

Mr. McCullom's testimony reflects that he is familiar with the job that the claimant discharged on the line. Regarding the number of carpal tunnel claims filed by employees working on the line, Mr. McCullom testified:

There's been a few. I wouldn't say there's a lot because it's really, it's real fast work but it's light. And what I mean by it's

light, those end shields weigh probably two pounds at the most. (T. 43).

The January 2004, incident involving the claimant's fall from the chair while initially filed under a separate claim number, was accepted by respondent as a compensable aggravation of the November 3, 2003, injury and consolidated under the original claim number.

One of the earlier medical reports contained in the record is a April 30, 2004, report of Dr. Samuel E. Murell, III, a Memphis orthopedic physician, which recites a history of the claimant's compensable November 3, 2003, injury, as well as a history of her course of medical treatment associated with the injury. The chief complaints of the claimant at the time of the April 30, 2004, visit were neck pain and right shoulder pain, upper back pain. The April 30, 2004, report further reflects:

**PRESENT ILLNESS:** The patient is a 44 year old female who presents with above mentioned complaints. According to the patient her symptoms are the result of an injury which took place on approximately 11/3/03. The patient had some difficulty with dates and reports injuries occurring on 11/3, 11/5 as well as 11/6/03 but is consistent in that she reports that she was at work for Emerson Electric when she was lifting a bucket overhead. According to the patient she experienced pain in her right arm and lost control of her left hand and had to be assisted by employees. She presented to see her primary care physician and notes indicate on 11/5/03 that she was having neck pain. Notes from her doctor's office indicate that she was complaining of left arm pain however as early as 10/9/03 with pain radiating to the left arm. She complained on 10/17/03 of arm pain which had been present for 1-2 months. When her symptoms developed, she also was seen by Dr. Stacy Noel and on 11/03 complained of occasional numbness in her left hand. She again reported an injury as described of lifting a heavy bucket of tools. She was treated conservatively with Dr. Noel and her symptoms did not improve. On 11/25/03 it was recommended that she undergo a CT scan which per Dr. Noel's notes indicated a bulge versus a focal disc herniation at the C5-6 level. Because of questions of a disc herniation on the CT scan, an MRI scan was recommended. This did show a disc herniation at the C5-6 level. The patient was then referred to physical therapy but then apparently fell out of a chair on 1/6/04 and has had right shoulder pain since that time. When her symptoms did not

improve it was recommended that she see a specialist and she seen by Dr. L'Heureux who felt that the patient needed to see a spine specialist. The patient was seen by Dr. LaVerne Lovell on 1/21/04. A diagnosis of C5-6 disc herniation with right greater than left radicular symptoms was made and the patient underwent anterior cervical discectomy and fusion on 1/29/04. Her own bone was used. No plate was utilized. Initially the patient showed satisfactory progress but post operatively began complaining of significant pain in her neck with headaches, numbness and had great anxiety about her post operative course. She appeared to have jerking of the right upper extremity. Dr. Lovell recommended hospitalization under her own insurance. Apparently she became upset and ultimately was placed on Xanax and with this her symptoms resolved. She did undergo a repeat MRI scan of the cervical spine. The patient presents today for 2<sup>nd</sup> opinion regarding her ongoing symptoms. According to the patient her symptoms are worse with exercise, sitting, standing, walking, bending forward, bending backward, sneezing, housework, and sexual activity. She states that she is not able to get significant relief. She denies any bowel or bladder incontinence. She reports she is not any better following surgery.

\* \* \*

#### IMPRESSION:

1. Status post anterior cervical discectomy and fusion C5-6.
2. Right shoulder impingement.

PLAN: I discussed the findings with the patient. I have told her that I would recommend a course of physical therapy. She has not had any therapy to date for her neck or her shoulder. I also told her that I might consider and injection of her right shoulder but she declines this. Should she not respond to conservative treatment she might ultimately require MRI scan of the right shoulder to rule out any evidence of rotator cuff tear.

Several questions arise concerning Ms. Carter. The first is her diagnosis at the time of her 11/3/03 injury. She does appear to have a cervical radiculopathy at that time but the medical records indicate she had radicular symptoms prior to her fall. Additionally she did have a C5-6 disc herniation which was reportedly the cause of her need for surgery. This is a right sided disc herniation and her initial symptoms were left sided. In light of this, I am not convinced that her left sided symptoms which led to her surgery were the result of a right sided C5-6 disc herniation as they pre-existed her 11/3/03 reported injury and were not the result of an injury on that date. . . . She appears to be on her way to a solid fusion. I have recommended that she

follow up with Dr. Lovell for this. I will defer any work restrictions to Dr. Lovell, her treating surgeon. I do anticipate that she should be able to be returned to full duty in the next few weeks. . . . (RX. #1, p. 2-5).

A Form AR-3, Physician's Report, completed by Dr. Lovell on June 14, 2004, reflects that the claimant was released to full duty on May 7, 2004, and that she had sustained a 8% permanent physical impairment to the whole body. (RX. #1, p. 10-11).

On January 6, 2005, the claimant was evaluated by Dr. Gregory F. Ricca, a Jonesboro neurosurgeon. The January 6, 2005, report relative to the evaluation by Dr. Ricca reflects the chief complaints of the claimant as right sided neck pain, right occipital pain, right shoulder pain, bilateral hand numbness and tingling. The report further reflects:

HPI: Mrs. Carter is a 44-year-old woman who injured her neck at work on a November 3, 2003 when she was lifting a bucket weighting approximately 35 pounds over he head. She developed immediate neck pain and has had problems since. The patient received extensive treatments and ultimately had an ACDF at C5-C6 for an HNP. Mrs. Carter reports that her symptoms have not improved an in fact her symptoms have worsened over the past eight months or more. Several days after her neck injury she fell when she was on a seated rolling chair and landed on her outstretched right upper extremity. She developed right shoulder pain. She has been evaluated multiple physicians. I reviewed a large amount of medical records on this patient. I also reviewed her preoperative cervical CT and cervical MRI as well as her postoperative cervical plain films.

\* \* \*

**IMPRESSION:**

1. Right-sided neck pain. I suspect some of this pain is myofascial and some is facet mediated.
2. Right occipital pain, occipital neuralgia.
3. Bilateral hand numbness and tingling, bilateral CTS, which is mild and slightly worse on the right than the left based on clinical findings.
4. Symptom magnification.

Ms. Carter's case is a complicated one. I believe there are multiple factors involved in the above complaints. I think one problem she has had is that

it seems from talking with her that her impression is that she has not been taken seriously. This can lead to symptom magnification.

\* \* \*

During my time with this patient and her spouse I did not get the impression of significant symptom magnification or malingering behavior.

After I met with Mrs. Carter I met separately with the caseworker. We reviewed some of Mrs. Carter's job duties. Mrs. Carter also had talked to me about her work and based on my conversation with Mrs. Carter was tolerating her work duties quite well and her co workers have been very supportive and helpful. Therefore with regards to work I believe Mrs. Carter is able to continue her work duties as she has been. . . . . (RX. #1, p. 12-13).

The claimant was seen in follow up by Dr. Ricca on January 11, 2005. At the time of the afore visit, Dr. Ricca noted that flexion/extension film showed a solid fusion at C5-C6. The January 11, 2005, office note further reflects:

Impression:

1. Right sided neck pain, right shoulder pain, bilateral hand numbness, and right occipital neuraigia.

I reviewed this with the patient and her family and recommended cervical blocks and even possibly facet blocks and facet rhizotomy. She may also need an occipital nerve block. She agreed to proceed with these. I will see Ms. Carter p.r.n.

After I met with Ms. Carter I met with the patient's caseworker and we again reviewed her history, my findings, as well as other physicians findings, and my impression as stated above. On May 7, 2004 Dr. Lovell felt that the patient had an 8% partial impairment based on the AMA guidelines. I believe this is reasonable. I also believe though Ms. Carter needs further treatments by a pain specialist. I am releasing Ms. Carter from my care. (RX. #1, p. 15).

On January 28, 2005, claimant was evaluated by Dr. Sunil Gera, a Jonesboro pain management specialist, pursuant to the recommendation of Dr. Ricca. Following his evaluation

of the claimant, Dr. Gera's assessment of her complaints were cervicalgia, post laminectomy-cervical region, cervical radiculopathy, and cervical spondylosis with degenerative joint disease in the cervical spine with facet arthropathy in the cervical area with headaches. The January 28, 2005, report also reflects, in pertinent part:

2. As far as the work status is concerned, I did talk to the patient about considering the amount of pain she is experiencing and correlating it with my objective finding, I think in my opinion she should not be lifting more than 40 pounds, especially over her head. Not be doing pushing and pulling to the same extent. Once she starts improving then we can decide accordingly.
3. Finally, she is not on any pain medicine so I am going to start her on Darvocet and Soma. The patient was advised that if she feels drowsy with this then she should not be operating any machinery where there is a risk of injuring herself.
4. After doing this, I had a detailed discussion with the case manager, Lisa Moses, and we had about three rounds of discussion with her. First, she told me that I am only being consulted for blocks whether epidural or rhizotomy and it is her opinion that I should not be stressing on her work status as well as the comprehensive pain management. I explained to her that it is fine. So I am going to restrict my consultation so that we do as a routine before any injections to rule out if the patient has any contraindications for injection, overall generalized physical status of the patient and if the patient is on any medicine, which may interact with my injections. So that is fine with me and then I will not be able to give her any pain medicine also. She can take it from her primary physician and she agreed for that. However, since the patient was told about the pain medicine, the patient again asked for it. Then another round of talk was done with the patient, her husband and case manager and so I told the patient if she needs pain medicine I am going to go ahead and give it to her and she should take it. Again, she was advised about the drowsiness and other things. Work status was not discussed again. (CX #1, p. 31-32).

The claimant was seen in follow up by Dr. Gera on March 2, 2005, after having undergone two

(2) cervical epidural steroid injections. The March 2, 2005, office note reflects, in pertinent part:

. . . Today she is in for a return visit, accompanied by a new case manager. According to the patient, she is not having any relief with the pain. According to her, when she comes back home, her husband said

that her shoulder area where the bra strap is swells up and according to her, she is in constant pain. She denies any specific radiation going down to the upper extremities. On repeated asking, she said the pain is mainly on the right cervical area. It is sometimes associated with headaches, which are very severe. The pain is constant. Last night she went to the ER and got Stadol and Toradol, which is giving her relief. (CX. #1, p. 35).

Following his examination of the claimant and outlining the next course of diagnostic studies, Dr. Gera noted that the claimant should be on light duty until her next office visit. On March 8, 2005, the claimant underwent right sided medial nerve branch block for C2-3, C3-4, C4-5 facet joints. (CX. #1, p. 37).

On April 11, 2005, the claimant underwent a functional capacity evaluation at Physiotherapy Associates pursuant to the directions of Dr. Gera. The April 12, 2005, relative to the functional capacity evaluation reflects the claimant's medications as Xanax and Hydrocodone. The April 12, 2005, functional capacity evaluation further reflects regarding the claimant:

**ASSESSMENT/SUMMARY:** Ms. Carter was seen for her functional capacity evaluation on 04/11/05 attending from 8:30 AM to 12:50 PM for testing. She was accompanied by her husband to our facility. Ms. Carter was found to be cooperative, however, is considered to have voluntarily self-limited her functional capacity evaluation due to her ongoing pain complaints. Ms. Carter's psychometric test results are considered poor and reflective of an individual who perceives herself as having a significant level of disability.

From a musculoskeletal standpoint, Ms. Carter does not present with any significant postural deficits. Soft tissue examination in the form of palpation throughout her neck, upper back, and bilateral UE's was found to be unremarkable. She did not present with any abnormal muscle tone and/or trigger points. Overall, she presents with normal muscle tone throughout her bilateral UE's and upper back. Neuroreflex testing revealed normal findings throughout bilateral UE's. For the most part, Ms. Carter displays normal findings relevant to neurosensory including light touch, sharp/dull, and/or hot/cold. However, she reports to have better sensation with light

touch in the (L) UE, 2-point digit sensation reveals normal findings except in regards to the (R) little finger, which displayed borderline between normal and fair based upon the AMA guidelines. AROM is considered unrestricted while performing her material and non-material handling activities throughout her cervical and bilateral UE's. Manual muscle testing throughout her bilateral UE's reveal 5/5 manual muscle grade strength.

\* \* \*

In summary, Ms. Carter performed within the light-medium work range, which is below her normal/customary job duties as self-reported. Ms. Carter did not present with any restrictive ranges and/or unsafe capacities relevant to performing the activities on this evaluation, but voluntarily self-limited her activities due to her ongoing subjective pain complaints. At present, her subjective pain complaints are found to be disproportionate in relation to our objective findings. Furthermore, we do not feel that further therapeutic intervention would provide her with any significant gains/benefits. Ms. Carter has been encouraged to continue with her home exercise program as provided by her previous therapist, as well as walking program. (CX. #1, p. 12).

The April 12, 2005, functional capacity evaluation noted that the claimant did not have a return appointment to be seen by Dr. Gera. Indeed, the medical in the record reflects that the claimant was last seen by Dr. Gera on March 23, 2005. In his report regarding March 23, 2005, visit, Dr. Gera recommended against further intervention. Dr. Gera also registered his concerns regarding the claimant being noncompliant with the Duragesic patch, and, as a consequence, declined to provide any more narcotics. Dr. Gera relayed in his March 23, 2005, report that he did not feel comfortable treating the claimant and discharged her from his care. The March 23, 2005, report reflects:

If she thinks she cannot go to work and if it comes to that then probably her functional capacity evaluation should be done. In the meantime, until they find an alternative doctor she can continue on the same duty status. (RX. #1, p. 29).

The record reflects the presence of a Work Release Form regarding the claimant which was provide by Dr. Gera's office noting that the claimant was able to work full time. (RX. #1, p. 32).

On July 26, 2005, the claimant was seen by Dr. Ron D. Schechter, a Paragould orthopedic physician, pursuant to a request of Dr. Shotts, with a chief complaint of right shoulder pain. After obtaining a history of her injury and performing a physical examination Dr. Schechter assessed the claimant's complaints as pain in the shoulder joint, rotator cuff syndrome and shoulder osteoarthrosis. The July 26, 2005, report of Dr. Schechter reflects:

I had a long discussion with the patient about her pain, the potential etiologies, and treatment options. Clinically, her pain seems to be most consistent with some subacromial impingement with AC joint degeneration. She appears to have some subacromial bursitis and rotator cuff tendinitis, but by MRI her rotator cuff appears intact. She also seems to have some hypersensitivity to touch around her neck and shoulder which could be suggestive of some RSD type of symptoms from neck surgery. Despite the potential issues around her neck surgery, it does seem that she has a separate problem related to her shoulder as her pain can be provoked with provocative testing around the shoulder. I recommended starting off with conservative treatment including a subacromial injection and therapy. If she was not improving from there we could consider the option of an arthroscopic subacromial decompression and distal clavicle excision. I was honest with her that with her hypersensitivity to touch around her neck and shoulder muscles, I would be worried about surgery provoking more RSD type symptoms and we both agreed that we wanted to try further conservative treatment before considering surgery. She was interested in pursuing an injection and therapy. However, there also seems to be some question as to whether or not this is a work-related injury. By her report her pain started after her fall at work about a year ago, I do believe it is possible that her current shoulder problem could be secondary to that fall and by her report is most likely the main cause of her fall. Therefore, before instituting any additional care we agree that she needed to return to work comp and have them reevaluate whether or not they are going to handle this as a work comp case or she will do it under her private insurance. If work comp is going to handle it, we will need to get their approval before proceeding with treatment. (RX. #1, p. 46).

On August 4, 2005, a Change of Physician Order was entered by the Medical Cost

Containment Department of the Arkansas Workers' Compensation Commission. The Order designated Dr. Harold Chakales, a Little Rock orthopedic surgeon, as the claimant's authorized treating physician. Claimant was initially seen by Dr. Chakales on September 6, 2006.

Following his review of diagnostic studies and physical examination of the claimant Dr. Chakales diagnosed the claimant's complaints as status post-op anterior cervical arthrodesis, C5-6, healed; suspected adjacent segment disease, C4-5, C6-7; and cephalgia secondary to chronic suboccipital neuralgia. Dr Chakales also noted that the claimant had not work outside of the home since March 10, 2005. (RX. #, p. 47-48).

Following a September 27, 2006, visit Dr. Chakales recommended repeating the MRI of the cervical spine as well as obtaining an EMG/NCV study of the claimant neck and both arms to determine the etiology of her symptoms. (RX. #1, p. 50). On December 5, 2006, the claimant underwent the afore diagnostic studies. (RX #1, p. 54-55; 57-58). A December 13, 2006, report of Dr. Chakales relative to the claimant reflects, in pertinent part:

Since my last report, Ms. Tina Carter has had an MRI which showed adjacent segment disease. The fusion at C5-6 has healed, but she has adjacent segment disease at C4-5 with a central subligamentous disc, and at C6-7 with posterior displacement. In addition to that, the EMG/ NCV study was abnormal and showed bilateral carpal tunnel syndrome, as well as bilateral C6 and C7 radiculopathy. Ms. Carter has problems with persistent chronic neck pain, with pain across the shoulders and into the arms.

At this time Ms. Carter is disabled and not working. I have prescribed pain pills for her today. I would recommend she have a cervical epidural steroid injection. She is also a suitable candidate for bilateral carpal tunnel release, as this should alleviate some of her hand and arm pain. She is to return to see me in 4 weeks. I have given her an informational pamphlet on the cervical spine, cervical surgery, and cervical epidural injection, as well as a booklet on carpal tunnel syndrome. (RX. #1, p. 56).

Responsive to a January 24, 2007, inquiry from claimant's attorney, Dr. Chakales relayed in a March 22, 2007, correspondence that he had diagnosed the claimant as having a cervical disc syndrome and carpal tunnel syndrome. Regarding the etiology of the diagnosed carpal tunnel syndrome, the March 22, 2007, correspondence reflects, in pertinent part:

With regard to whether her carpal tunnel syndrome is related to her industrial injury, if there is repetitive use of the hands it can be recognized as a well-documented form of compensated injury. This usually occurs in the workplace when people perform repetitive motions with their hands. However, many carpal tunnel cases are not work related and develop idiopathically.

I feel Ms. Carter has a cervical disc syndrome and carpal tunnel syndrome. It is my recommendation that the carpal tunnel surgery be performed first. This is a lesser surgery, and there is a possibility if she has a good result from this surgery, she may not require cervical disc surgery. It has been my experience that many people who have had carpal tunnel and a cervical disc problem seem to do better if the carpal tunnel surgery is performed first. Epidural steroid injections can frequently resolve the majority of their cervical spine complaints. The carpal tunnel syndrome is definitely related to her compensated injury, and in order to obtain maximal therapeutic benefit I would recommend the carpal tunnel decompression at this time. (CX. #1, p. 51).

The claimant was again seen by Dr. Chakales on April 4, 2007. The April 4, 2007, office note reflects a comparison of the various diagnostic studies performed regarding the claimant's cervical spine between December 1, 2003, and December 5, 2006. The April 4, 2007, clinic note concludes:

. . . . I initially made x-rays of the cervical spine on September 6, 2005 [2006], which shows a solid fusion of C5 on C6. She has some spondylosis of C4 on C5 and C6 on C7. Physical findings are unchanged today. She has adjacent segment disease and bilateral carpal tunnel syndrome. From a surgical standpoint, she should have the carpal tunnel syndrome addressed first. Later we could consider extending the arthrodesis to C6-7, and possibly to C4-5. I will give her some pain pills and see her in 1 month. I have increased her Lyrica to 150 mg b.i.d. (CX. #1, p. 53).

The final medical report contained in the record grows out of May 2, 2007, visit of the claimant to Dr. Chakales. The May 2, 2007, report reflects, in pertinent part:

Ms. Carter returned in follow up on May 2, 2007, and continues to have problems with her hands from the bilateral carpal tunnel syndrome, as well as adjacent segment disease from her cervical fusion. The question is whether the carpal tunnel syndrome is related to her workers' compensation injury. She states she worked on an assembly line and did repetitive work using her hands. Repetitive use of the hands is now stated as a cause of carpal tunnel compression. Physical findings are unchanged today.

I feel Ms. Carter is a suitable candidate for bilateral carpal tunnel release, with subsequent reevaluation of her neck. She may receive enough relief from the release that she would not require any further cervical spine surgery.

Ms. Carter will return to see me again in 4-6 weeks. At the present time she is not working and last worked on March 10, 2005. (CX. #1, p. 54).

The record reflects the presence of a March 9, 2004, job analysis of the end shield assembler position which was prepared on March 11, 2004. The credible testimony in the record reflects that the claimant performed the end shield assembler job during her employment with respondent. The job analysis reflects with respect to the typical duties and description of the task:

End Shield Assembler performs assembly operations to prepare end shields for assembly to motors. Involves placement of various small parts into end shields and maintaining an adequate supply of parts with in the section. Coordinate own work with that of group and group leader assist in retrieving supplies or permawick solution required for machine operation. Work to written specifications and maintain the paperwork essential to job. There are approximately 600 end shields produced by each assembler per hour for approximately 7200/shift. (CX. #2, p. 2).

The job analysis further reflects regarding repetitive use of hand by the employee:

The Nurse Case Manager observed this position being performed and the End Shield Operator did lift and place the End Shield on to the machine with quick, easy movements and the part was placed on the machine with

out difficulty and no pressure to press the part down is required. (CX. #2,p. 3).

It is undisputed that the claimant had her mother-in-law deliver her assigned employee identification badge to the Human Resources officer. In confirming the purpose of submitting the employee identification the May 10, 2005, letter of Mr. McCullom, Senior Human Resources Specialist, to the claimant reflects:

Your mother in law, Sharon Carter, brought your Emerson Electric badge to me indicating that you were quitting your employment with Emerson Electric. This letter confirms that you have quit effective 5-10-05.

If you have a Retirement Savings Plan account and need help with this, please contact me at 239-2171. (CX #2, p. 5).

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

### **FINDINGS**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On November 3, 2003, the relationship of employee-employer existed between the parties.
3. On November 3, 2003, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$315.00/\$266.00, for temporary total/permanent partial disability.
4. On November 3, 2003, the claimant sustained an injury to her neck arising out of and in the course of her employment, which was aggravated by a January 6, 2004, accident, which was also accepted as compensable.

5. The claimant's diagnosed bilateral carpal tunnel syndrome was sustain within the course and scope of her employment on or about November 3, 2003.

6. In addition to prior periods of total incapacity, the claimant was temporarily totally disabled for the period beginning September 6, 2006, and continuing through the end of her healing period, a date to be determined.

7. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of November 3, 2003, to include those associated with the diagnosed bilateral carpal tunnel syndrome.

8. Respondent has controverted the cost associated with the recommended bilateral carpal tunnel release surgery as well as the claimant's entitlement to temporary total disability benefits subsequent to September 6, 2006.

### **CONCLUSIONS**

On November 3, 2003, the claimant sustained an injury to her neck which was accepted as compensable by respondent. On or about January 6, 2004, claimant suffered an accidental fall at work which injured her shoulder. The January 6, 2004, injury was accepted as a compensable aggravation of the November 3, 2003, compensable injury. Claimant asserts that her diagnosed bilateral carpal tunnel syndrome, for which her authorized treating physician has recommended surgery, grows out of her employment with respondent. Claimant seeks additional medical benefits as well as corresponding temporary total disability benefits and controverted attorney fees. Respondent deny that the claimant is entitled to additional temporary total disability or medical benefits associated with the diagnosed bilateral carpal tunnel syndrome. The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts

entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision.

The claimant commenced her employment with respondent on December 12, 2000. There is not a dispute regarding the claimant's job duties. Indeed, the record contains a job analysis of the end shield assembler position, the job that the claimant performed during the pertinent time period prior to November 3, 2003. The rapid and repetitiveness of the job is clearly reflected in the job analysis and corroborated by the credible testimony of the witnesses, to include the claimant.

Further, the credible evidence in the record reflects that claimant complained on pain and numbness in her arms/hands prior to the November 3, 2003, accident, which serves as the basis for the initial claim. The medical in the record reflects that the claimant relayed a history of losing strength in her upper extremity at the time of the November 3, 2003, accident. Claimant is right hand dominate. The claimant was seen by Dr. Samuel E. Murrell, III, a Memphis orthopedic physician, at the request of the medical case manager of respondent on April 30, 2004. Dr. Murrell's report reflects, based on his review of the medical records of the claimant's physician, that claimant had registered complaints left arm pain as early as October 2003, prior to the November 3, 2003, compensable accidental event.

In February 2004, following her cervical disc surgery Dr. Laverne R. Lovell, the claimant's Memphis treating neurosurgeon, arranged for the claimant to undergo EMG/nerve conduction velocities. That portion of the study that the claimant underwent disclosed the presence of mild left carpal tunnel syndrome. (CX. #1, p. 20). The claimant's cervical disc surgery resulted in a 8% permanent physical impairment to the body as whole, which was

accepted by respondent who paid corresponding indemnity benefits in connection with the rating.

It is undisputed that the claimant last discharged employment duties for respondent on March 10, 2005. Claimant attributes her continuing symptoms and performing a job which entailed lifting task in excess of medical restriction as the basis for her ceasing employment. Indeed, subsequent to the claimant's discharge from his care by Dr. Gera on March 23, 2005, the claimant continued to seek and obtain medical treatment relative to her symptoms which she attributed to the compensable injury. The July 26, 2005, report of Dr. Ron D. Schechter, a Paragould orthopedic surgeon, reflects that claimant was referred by Dr. Shotts for evaluation of right shoulder pain.

Claimant ultimately obtained an authorized change of treating physician to Dr. Harold H. Chakales. While under Dr. Chakales' care and treatment, since September 6, 2006, claimant has undergone a successful EMG/NCV study which disclosed the presence of bilateral carpal tunnel syndrome, and for which surgery has recommended. At the time of his initial visit with claimant of September 6, 2006, Dr. Chakales noted that claimant had not worked outside the home since March 2005. In addition to recommending a course of treatment regarding the claimant's diagnosed bilateral carpal tunnel syndrome and cervical disc complaints, Dr. Chakales has also expressed an opinion regarding the nexus of the claimant's complaints to her employment/industrial accidental injury.

Carpal tunnel syndrom is a gradual-onset injury, for which the claimant is not required to prove was caused by rapid repetitive motion. *Kidlow v. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W.2d 190 (1998). In order to prove a compensable gradual-onset injury and corresponding entitlement to workers' compensation benefits, the claimant must prove by a preponderance of

the evidence that the injury arose out of and in the course of her employment; that the injury caused internal or external physical harm to the body that required medical services or resulted in disability or death; and the injury was a major cause of the disability or need for treatment. Ark. Code Ann. §11-9-102 (4)(A)(ii) & (E)(ii). Additionally, a compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102 (4)(D). In the instant claim, the claimant has sustained her burden of proof by a preponderance of the credible evidence that the diagnosed bilateral carpal tunnel injury arose out of and in the course of her employment with respondent on or before November 3, 2003.

As noted above, the claimant's authorized treating physician, Dr. Chakales, has recommended as specific course of treatment with respect to the claimant's compensable injuries, to include the bilateral carpal tunnel syndrome. Ark. Code Ann. §11-9-508 (a) mandates that employers provide such medical services as may be reasonably necessary in connection with the employee's injury. *Morgan v. Desha Tax Assessor's Office*, 45 Ark. App. 95, 871 S.W.2d 429 (1994). Whether a medical procedure or device is reasonable and necessary is a question of fact. *Compressor Equipment v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000). The evidence preponderates that the treatment recommended by Dr. Chakales is reasonably necessary in connection with the claimant's compensable bilateral carpal tunnel syndrome. Respondent has controverted the afore.

Temporary total disability isn that period within the healing period in which a claimant suffers a total incapacity to earn wages. *Arkansas State Highway & Transportation Department v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). In the instant claim, the claimant suffered both an unscheduled injury [cervical spine] and scheduled injuries [bilateral carpal tunnel

syndrome]. Entitlement to temporary total disability benefits for an unscheduled injury is contingent upon a showing that the claimant is completely incapacitated from earning wages and remains within her healing period. An employee who has suffered a scheduled injury is to receive temporary total or temporary partial disability benefits during her healing period or until she returns to work, so long as the inability to work is connected to the compensable scheduled injury. *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001).

In the instant claim, the claimant was released to return to light duty work through March 23, 2005, at which time she was discharged from the care of Dr. Gera. At the time claimant submitted her employment identification badge on May 10, 2005, she had not discharged employment duties in two (2) months-not since March 10, 2005. While the claimant was seen by her Dr. Shotts and Dr. Schechter subsequent to March 23, 2005, there is no evidence in the record to reflect that she was directed to remain off work relative to compensable injury prior to the September 6, 2006, treatment under care of Dr. Chakales. The records of Dr. Chakeles clearly reflect that the claimant has been directed to remain off work pending the recommended treatment relative to the diagnosed compensable bilateral carpal tunnel syndrome. Respondent has controverted the claimant's entitlement to temporary total disability benefits subsequent to September 6, 2006.

#### **AWARD**

Respondent is herein ordered and directed to pay to the claimant temporary total disability benefits at the weekly compensation benefit rate of \$315.00, for the period beginning September 6, 2006, and continuing until such time as the claimant reaches the end of her healing period or returns to work, as a result of the compensable bilateral carpal tunnel syndrome growing out of

her employment on or before November 3, 2003. Said sums accrued shall be paid in lump without discount.

Respondent is further ordered and directed to pay all reasonably necessary, medical, nursing, hospital and other apparatus expenses in connection with the claimant's compensable bilateral carpal tunnel syndrome, to include medical related travel.

Maximum attorney fee is herein awarded to the claimant's attorney on the controverted indemnity benefits herein awarded, pursuant to Ark. Code Ann. §11-9-715.

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.**

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**Andrew L. Blood, ADMINISTRATIVE LAW JUDGE**