

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F613285**

GEORGETTE CUNNINGHAM, EMPLOYEE	CLAIMANT
VIRCO MANUFACTURING CORP., EMPLOYER	RESPONDENT
ST. PAUL TRAVELERS INSURANCE, CARRIER	RESPONDENT

**OPINION FILED SEPTEMBER 25, 2007**

A hearing was held before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, on August 29, 2007, in Little Rock, Pulaski County, Arkansas.

The claimant appeared pro se.

The respondents were represented by THE HONORABLE Michael R. Mayton, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on August 29, 2007, in Little Rock, Arkansas. A Prehearing Order was previously entered in this case on May 21, 2007. This Prehearing Order set forth the stipulations offered by the parties, the issues to be litigated, and their respective contentions.

**STIPULATIONS**

By agreement of the parties, the stipulations applicable to this claim are as follows:

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

2. The employee-employer-carrier relationship existed at all

relevant times, including November 27, 2006.

3. The claimant's weekly wage was \$332.00; her temporary total disability compensation rate is \$221.00; and her permanent partial disability rate is \$166.00.

4. The claimant's date of hire was November 6, 2006.

### **ISSUES**

At the time of the prehearing conference, the parties agreed to litigate the following issues:

1. Did claimant sustain a compensable bilateral carpal tunnel injury?

2. Is claimant entitled to reasonable and necessary medical treatment?

3. Is claimant entitled to temporary total disability benefits from November 28, 2006 to a date to be determined?

### **CONTENTIONS**

Claimant contends that she sustained a bilateral carpal tunnel injury and is entitled to reasonable and necessary medical treatment and temporary total disability benefits.

Respondents contend that claimant did not sustain compensable bilateral carpal tunnel syndrome while employed by respondent employer and is not entitled to any benefits. There were no objective medical findings of an injury. The claimant did not miss enough time from work to entitle her to any benefits. The claimant's current problems and need for treatment, if any, are not

related to her employment with respondent employer, but are preexisting and unrelated to her employment.

In the alternative, if it is determined the claimant sustained a compensable injury while employed by the respondent employer, the respondents hereby request a setoff for all benefits paid by the claimant's group health carrier, all short term disability benefits received by the claimant, all long term disability benefits received by the claimant and all unemployment benefits received by the claimant.

The documentary evidence submitted in this case consists of the Commission's Prehearing Order, which has been marked as Commission's Exhibit No. 1. The claimant's Response to the Prehearing Questionnaire was marked as Commission's Exhibit No. 2. The respondents' Response to the Prehearing Questionnaire was marked as Commission's Exhibit No. 3. The respondents' medical packet was marked as Respondents' Exhibit No. 1.

The following witnesses testified at the hearing: the claimant, and a friend, Charles Loudermilk.

### **DISCUSSION**

The claimant, age 49(7/09/58), had worked for the respondent employer for approximately three weeks stacking chairs, as she began working for the respondent on or about November 6, 2006. The claimant essentially testified that her job title was that of press operator. The claimant also testified she would work in

one section and then go help with another department. She testified, "It was material handling, we were lifting parts onto a frame for the welders that go down and weld parts to the chairs. To make the chairs. Sorting. Learning new machines."

According to the claimant, she was required to lift chairs up to the press. The claimant alleges that while performing these job duties on or about November 27, 2006, she began experiencing numbness, and pain in both her wrists. The claimant specifically testified:

A. I had the problems with the arms about, the first time I went to the doctor I think it was December the 1<sup>st</sup> because, I'd go home and go to bed and I would wake up. They were hurting. And they were, this, my left arm kept going numb on me. And it would go down to my fingertips. And I've never had that before.

Q. December 1<sup>st</sup> is the first time?

A. Right before Thanksgiving, I think it was, yeah about the 26 or 27<sup>th</sup>. I made an appointment with their doctor. I reported it right away, as soon as it happened because I went to my bosses and explained that I was having problems and they sent me to the nurse. And they scheduled me for an appointment with the doctors, their doctor. And that's when the problem began.

The claimant testified that she next went to see the company doctors, Drs. Meador and Murphy. According to the claimant, she had not experienced any prior problems with her wrists. The claimant testified she became irritable during one of her visits with Dr. Meador, but she denied having screamed and hollered, as she maintains she was only attempting to get the situation

resolved. The claimant went on to give an extensive explanation for the disagreement between she and Dr. Meador. The claimant essentially explained she had other issues going on in addition to her alleged work-related injury. During her testimony, the claimant admitted she discontinued the use of the splints because they made her hands swell, as they cut off her circulation.

The claimant maintains she quit working for the respondent on or about December 13, 2006 due to problems with her wrists. However, the claimant admitted that no doctor has restricted her from working, nor has she been given any off-work slips.

On cross examination, the claimant admitted that since moving to Arkansas some 10 years ago, she has primarily done factory-type work and worked as a waitress at various places. The claimant admitted that approximately four months prior to going to work for the respondent, she was out of work. As a result, she worked for her boyfriend in his wood cutting business. Although the claimant essentially testified she primarily took calls and things of that nature, she admitted she would help out with the wood cutting business, which is hard work. The claimant also admitted that around this period of time, she helped her boyfriend to take care of his parents' farm and its upkeep.

Charles Loudermilk, the claimant's boyfriend, also gave testimony. He essentially corroborated the claimant's testimony.

He testified that the claimant had not previously complained of problems with her wrists and that she had complained of numbness and tingling due to her work duties around the end of November. According to Mr. Loudermilk, the claimant would awaken in the middle of the night shaking her hands and she would constantly rub them in an attempt to get the circulation back in them.

The claimant's assigned medical provider was Dr. Sharon Meador. However, it appears she initially received medical treatment under the administration of Dr. Murphy on December 1, 2006. At that time, the claimant reported having developed some three days ago bilateral pain in her arms, wrists and into her fingers, along with numbness and tingling, as a result of lifting chairs back up to the press at work. On examination, Dr. Murphy found in pertinent part, the claimant to have "bilateral wrist tenderness, minimal to palpation, neg tinnels [sic] test and no swelling...." Dr. Murphy assessed the claimant with bilateral wrist pain, for which he ordered bilateral wrist splints, prescribed medication and placed the claimant on a modified work-duty. Dr. Murphy also directed the claimant to return for a follow-up check on December 4, 2006.

The claimant saw Dr. Meador on December 4, 2006 for follow-up care of her bilateral wrist pain. At that time, the claimant also complained of migraine headaches, which were not work-related. Dr. Meador assessed the claimant as having bilateral

wrist pain and migraine headaches (not work-related), and released her back to a modified work-duty and directed her to return for a follow-up visit in 10 days.

In addition, on December 4, 2006, Dr Meador specifically reported:

#### HISTORY OF PRESENT ILLNESS

This is the third week that Ms. Cunningham has worked at Virco. She states that she is "always doing repetitive work", and both her wrists and arms hurt. She is right hand dominant.

She denies any particular injury or traumatic event at work. She has been primarily working on punch machines, lifting chair parts. She has not used power drills or screwdrivers at all.

She states that her wrists and arms started hurting last Tuesday or Wednesday.

She complains of wrist pain, pain shooting up her arms to her shoulders, and numbness of both arms from the elbows down to the tips of her fingers. The pain and numbness is constant, awakens her at night.

She denies any previous pain or numbness in her upper extremities.

She was seen her [sic] on Friday, December 1, 2006, by Dr. Murphy, who prescribed naprosyn. Ms. Cunningham stats [sic] that the naprosyn makes her sick at her stomach, and she needs something stronger for her arm pain.

She also complains of a migraine headache, and asks for something strong to knock her out so her headache will go away.

She states that she went to see her doctor today, who told her she has carpal tunnel syndrome. He did not prescribe anything for her headache or her arm pain. She has not been back to work, although she was released to return to work by Dr. Murphy. She states she is not going to work tonight, either, because of her headache.

She does not like Dr. Murphy: she wouldn't give her anything for pain, and told her she needed to get an education and into another type of work.

#### OBJECTIVE FINDINGS

VITAL SIGNS BP 120/80 P 72 WT HT

48 year old white female, appears older than stated age, frowning, alert, in no distress. There is no photophobia exhibited.

Exam of her upper extremities reveals no deformity, edema or ecchymoses. There is mild erythema over the dorsal aspect of the 3<sup>rd</sup> and 4th metacarpals of the left hand.

There is full active range of motion of fingers, wrists, elbows and shoulders. All movements cause complaints of pain.

Motor exam is inconsistent, with giveaway with all resisted movement of the upper extremities.

Sensation is decreased bilaterally to light touch in a glove distribution starting 2 inches above the elbows to the tips of all digits.

Skin is warm and dry.

Capillary filling is less than 2 seconds.

Pulses are brisk and symmetrical.

Tinels at the wrists cause pain at percussion site only. Tinels at the elbow is negative. Phalen's test is negative.

Optic discs are sharp, fundi are benign. Neck is supple and non-tender. There is no focal neurological deficit.

#### ASSESSMENT

Bilateral wrist and upper extremity pain.

Non-anatomical hypesthesia of both upper extremities. She may have carpal tunnel syndrome, but the exam is so inconsistent that it is impossible to tell. If she does have CTS, it was a pre-existing condition: I am unaware of any job at Virco that would cause CTS in 2 weeks time.

She does appear to have tendonitis of the left hand. Possible migraine headache.

#### PLAN

Discontinue naprosyn, and take 2 tylenol four times a day.

See her personal physician for her headache.

Modified duty.

If she is having this much discomfort after a few days in a factory, she should indeed consider another line of work.

Wear forearm splints 24/7 except for grooming.

Return for recheck in 10 days. Will start PT at that time, if she is not improved.

On December 6, 2006, Dr. Meador reported, in pertinent part the following:

**PROGRESS OF PRESENT ILLNESS**

Ms. Cunningham started yelling at me as soon as I walked into the exam room today. She was not very coherent, but some statements I heard are: She worked for 3 hours last night, and her entire left arm went numb. Her right arm hurts. There is nothing she can do at Virco that won't hurt her arms. She can't wear the splints because they cut off the circulation to her hands. She knows something is wrong with her, and she wants to find out what it is. She needs something strong for pain. She is going to see her own doctor.

She interrupted me every time I tried to ask a question or make a comment. I was not able to finish a complete sentence. I tried to explain that she has tendonitis and possibly a strain, but that it could take a few weeks of wearing splints and light duty and maybe physical therapy for her hands to quit bothering her. She continued to yell at me, and I wasn't able to perform an adequate exam.

**VITAL SIGNS BP 108/82 p 68**

She was not wearing any splints. The dorsum of the left hand appeared minimally swollen and mildly erythematous; both hands are warm and dry. This is as much of an exam I could do before she walked out of the room and out of the clinic, yelling as she went.

**ASSESSMENT**

Bilateral wrist and upper extremity pain and swelling. Non-anatomical hypesthesia of both upper extremities (from exam 12/4/06).

She may have carpal tunnel syndrome, but the exam is so inconsistent that it is impossible to tell. If she does have CTS, it was a pre-existing condition; I am unaware of any job at Virco that would cause CTS in 2 weeks time.

She does appear to have tendonitis of the left hand. Physical therapy would probably help her.

Possible migraine headache.

Ms. Cunningham seems to have some emotional possible psychological problems, and poor anger management.

I am not sure what this Ms. Cunningham wants, but I will not allow her back into this clinic.

At that time, Dr. Meador also discharged the claimant from care and directed her not to ever return to the clinic.

### **Compensability**

In the present matter, the claimant has not specifically asserted a gradual onset bilateral carpal tunnel syndrome injury or a specific incident injury, as a result of her work activities with the respondent. Therefore, assuming if the claimant is alleging a gradual onset bilateral carpal tunnel syndrome injury, she is not required under the provisions of Act 796 of 1993 to establish that her work duties required rapid repetitive motion in order to establish the compensability of her carpal tunnel syndrome injury. Kildow v. Baldwin Piano & Organ, 333 Ark. 335, 969 S.W.2d 190 (1998). However, the claimant must still prove that she sustained a carpal tunnel syndrome injury arising out of and in the course of employment, that a work-related injury is the major cause of her disability or need for medical treatment, and the compensable injury must be established by objective medical findings.

For the claimant to establish a compensable bilateral carpal tunnel syndrome injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. § 11-9-102(4)(A)(i), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof

by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. Mickel. v. Engineered Speciality Plastics, 56 Ark. App. 126, 938 S.W.2d 876 (1997).

Whether the claimant is alleging a gradual onset or specific incident injury of bilateral carpal tunnel syndrome, in either instance, the injury must be established with medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). "Objective findings" are those findings which cannot come under the direct control of the patient. Ark. Code Ann. § 11-9-102(16). The claimant bears the burden of proof in establishing a compensable injury and must sustain that burden by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(E)(i).

After a complete review of the entire record, I find the claimant has failed to establish a compensable injury gradual

onset or specific incident injury, in the form of bilateral carpal tunnel syndrome with medical evidence supported by objective findings as required by Act 976 of 1993. "Objective findings" are defined in Ark. Code Ann. § 11-9-102 (16) as: "Those findings which cannot come under the voluntary control of the patient." Although, Dr. Meador opined that the claimant may have "bilateral carpal tunnel syndrome," she specifically stated the exam was so inconsistent, it was "impossible to tell." She further opined that even if the claimant did have CTS, it was a preexisting condition. There are no medical opinions or other evidence to support a finding to the contrary. In the present matter, there is no medically documented diagnosis of a bilateral carpal tunnel syndrome injury, but more importantly, nor is there any objective medical findings establishing a bilateral carpal tunnel syndrome injury. Although the claimant reported to Dr. Meador that her own doctor had diagnosed her with carpal tunnel syndrome, she failed to introduce a copy of this report into evidence. Therefore, due to all of the foregoing reasons, I find the claimant failed to establish by medical evidence supported by objective findings a bilateral carpal tunnel syndrome injury, as a result of a gradual onset injury or by a specific incident injury, while working for the respondent. While I recognize that Dr. Meador noted on December 6, 2006 that the claimant appeared to have "tendonitis of the left hand," and reported that "the

dorsum of the left hand appeared minimally swollen and mildly erythematous, both hands warm and dry." She also noted that the claimant had bilateral wrist and upper extremity pain and swelling. However, based on the record as a whole, I do not find any of the aforementioned to be causally connected to the claimant's work activity. Specifically, the claimant testified that she discontinued the use of the splints because they caused swelling; and when the claimant first sought treatment on December 1, 2006, which was prior to her use of the splints, Dr. Murphy reported that she had "no swelling." In addition to this, the claimant initially complained of only pain, numbness and tingling. As such, I find that the preponderance of the evidence establishes that it is more probable than not that the claimant's tendonitis and/or swelling, etc., resulted from the treatment/splints, rather than her work activities.

Therefore, having found that the claimant failed to prove by a preponderance of the evidence that she suffered a compensable injury, I further find that the claimant is not entitled to any reasonable and necessary medical treatment for her current wrist problems, nor is she entitled to temporary total disability compensation. This claim is hereby respectfully denied and dismissed.

**FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

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

2. The employee-employer-carrier relationship existed at all relevant times, including November 27, 2006.
3. The claimant's weekly wage was \$332.00; her temporary total disability compensation rate is \$221.00; and her permanent partial disability rate is \$166.00.
4. The claimant's date of hire was November 6, 2006.
5. The claimant failed to establish by medical evidence supported by objective findings that she sustained a compensable gradual onset or specific incident injury in the form of bilateral carpal tunnel syndrome while working for the respondents.

**ORDER**

The claimant has failed to establish by objective medical evidence she sustained a bilateral carpal tunnel syndrome injury to her wrists while working for the respondents by either a gradual onset or specific incident injury. Therefore, this claim must be, and hereby is, respectfully denied.

**IT IS SO ORDERED.**

---

**CHANDRA HICKS**  
**Administrative Law Judge**

**CH/ml**