

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F606678

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| BARBARA L. DANIELS, EMPLOYEE | CLAIMANT |
| COLUMBIA COUNTY INDEPENDENT LIVING, EMPLOYER | RESPONDENT |
| CYPRESS INSURANCE COMPANY, INSURANCE CARRIER | RESPONDENT |

OPINION FILED JULY 3, 2007

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Hope, Hempstead County, Arkansas.

The claimant was represented by HONORABLE CLAUDELL WOODS, Attorney at Law, Magnolia, Arkansas.

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

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on June 7, 2007, in Hope, Arkansas. A Prehearing Order was entered in this case on April 3, 2007. This Prehearing Order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this Prehearing Order was made Commission's Exhibit No. 1 to the hearing record.

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

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

2. The claimant was an employee of the respondent employer at all relevant times.
3. The alleged 2006 right cubital tunnel syndrome condition at issue was not the result of any one identifiable incident or accident.
4. The appropriate compensation rates are \$362/271.

By agreement of the parties, the issues identified in the Prehearing Order to be litigated and resolved at the present time are limited to the following:

Claimant:

1. Whether the claimant's cubital tunnel problem is compensable.
2. Whether the claimant's cubital tunnel problem is work related.
3. Whether the respondents are required to pay attorney's fees on the cubital tunnel problem.
4. Whether the claimant is entitled to a second medical opinion paid for by the respondent.
[Reserved]

Respondents:

1. Compensability of cubital tunnel problem.

The record consists of the transcript of the June 7, 2007, hearing and all exhibits contained therein.

DISCUSSION

The claimant had been employed by Columbia County Independent Living for 26 years by the time of the June 2007

hearing. Columbia County Independent Living is a residential living facility for mentally handicapped women. The facility currently has 18 clients.

At the time of the hearing, the claimant's position was client services coordinator and waiver case manager. She was diagnosed initially in 2006 with bilateral carpal tunnel syndrome. After undergoing release procedures to both wrists, she was later diagnosed with cubital tunnel syndrome in the right elbow. As of October 18, 2006, Dr. Marcia Hixson, the claimant's treating orthopedic physician, recommended a right cubital tunnel release procedure.

The respondents have accepted the claimant's bilateral carpal tunnel syndrome as work related injuries. The respondents have not accepted liability for the right cubital tunnel syndrome. The claimant asserts that she developed her right side cubital tunnel syndrome in 2006 as a result of her job duties and responsibilities. The respondents contend that the claimant's job at Columbia County Independent Living does not involve the rapid and repetitive use of her elbows and that the major cause of the condition is not the claimant's employment.

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

- (ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence; if the injury is:
 - (a) Caused by rapid repetitive motion. Carpal tunnel syndrome is specifically categorized as a compensable injury falling within this definition[.]

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

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

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

The Arkansas Court of Appeals has summarized the Court's analysis as follows in determining whether work duties are properly classified as "rapid repetitive motion" in Holland Group, Inc. v. Hughes, 95 Ark. App. 369, ___ S.W.3d ___ (2006):

In determining whether a worker's injury was the result of repetitive and rapid motion, the appellate courts have required some showing of how rapidly the repetitive actions were performed. See *Hapney v. Rheem Mfg. Co.*, 342 Ark. 11, 26 S.W.3d 777 (2000) (Commission's denial of benefits reversed where movements repeated every twenty seconds); *Parker v. Atlantic Research Corp.*, ___ Ark. App. ___, ___ S.W.3d ___ (June 30, 2004) (where the Commission found that appellant's job duties fell within the meaning of rapid repetitive motion, considering the multiple tasks that she was required to perform at high volume and with quick and fast movements in a repetitive nature over the course of a sometimes ten-to-twelve hour shift, six to seven days a week, there was substantial evidence to support the Commission's finding that appellant's job duties required rapid repetitive motion); *Boyd v. Dana Corp.*, 62 Ark. App. 78, 966 S.W.2d 946 (1998) (a series of repetitive motions, performed 115 to 120 times per day separated by periods of only 1.5 minutes, constituted rapid motion within the meaning of the statute); *High Capacity Prods. v. Moore*, 61 Ark. App. 1, 962 S.W.2d 831 (1998) (movements repeated every fifteen seconds found to be sufficiently "rapid").

In the present case, the claimant described in her testimony job duties assisting clients with activities of daily living as well as administrative duties. At various

times in the hearing, the claimant described her various job duties as including secretarial work, paying bills for six clients living in their own apartments, occasionally taking clients shopping, cooking assistance, completing forms, DDS files, and Medicaid waivers. The claimant also drives clients to doctors' appointments and to the airport. The claimant assisted a client with a broken hip in getting up and pushed her in a wheel chair. The claimant would log, open, and stamp the mail, go to the post office, dispense medicines, fill out forms and letters, file, fill the Coke machine twice each week, change light bulbs and detector batteries, cook and give baths as required, answer the phone, and answer the doorbell.

I find that this record does not establish that the claimant's various job duties require repetitive elbow motion. In addition there are no details in the evidence with which to establish that the claimant's various job activities were performed rapidly. This claim for a gradual onset ulnar nerve injury must therefore be denied. See Holland Group, Inc. v. Hughes, 95 Ark. App. 369, ___ S.W.3d ___ (2006) [Claim for gradual onset ulnar nerve injury must be denied if there is no evidence to indicate that work

activities were performed rapidly, even where activities are undoubtedly repetitive].

I also find that the claimant has failed to establish by a preponderance of the credible evidence that her cubital tunnel syndrome condition arose out of her job duties at Columbia County Independent Living. Dorland's Illustrated Medical Dictionary (30th Ed.) defines cubital tunnel syndrome as "a complex of symptoms resulting from injury or compression of the ulnar nerve at the elbow, with pain and numbness along the ulnar aspect of the hand and forearm, and weakness of the hand." In the present case, there is simply no evidence in the record indicating what causes cubital tunnel syndrome, and there is no evidence in the record indicating what job duties, if any, at Columbia County Independent Living were possible risk factors for the claimant sustaining injury or compression of the ulnar nerve in her right elbow. In addition, no physician has rendered an expert medical opinion in the record indicating that the claimant's cubital tunnel syndrome arose out of her employment duties at Columbia County Independent Living. Under these circumstances, it would appear to require speculation and conjecture on my part to conclude that the

claimant's job duties at work somehow caused her cubital tunnel syndrome at issue in this claim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The claimant was an employee of the respondent employer at all relevant times.
3. The alleged 2006 right cubital tunnel syndrome condition at issue was not the result of any one identifiable incident or accident.
4. The appropriate compensation rates are \$362/271.
5. The claimant has failed to establish by a preponderance of the evidence that her cubital tunnel problem is a compensable injury. Specifically, the claimant has failed to establish by a preponderance of the evidence that her cubital tunnel syndrome was caused by rapid repetitive motion. In addition, the claimant has failed to establish by a preponderance of the evidence that her cubital tunnel syndrome arose out of her employment duties at Columbia County Independent Living.

ORDER

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

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge