

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F613229

BASILIZA FLOREZ	CLAIMANT
PETERSON FARMS, INC.	RESPONDENT
COMCARE ADMINISTRATORS, INC. INSURANCE CARRIER	RESPONDENT

OPINION FILED JULY 20, 2007

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

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

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on June 4, 2007, in Springdale, Arkansas.

A pre-hearing order was entered in this case on March 13, 2007. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Immediately prior to the commencement of the hearing, the claimant announced that she was withdrawing any claim for a compensable injury involving her left shoulder and that the central dispute was whether the claimant sustained compensable injuries to her left arm and wrist, as the result of her day to day employment activities for the respondent. The claimant also seeks the payment of medical expenses, temporary total disability benefits from October 25, 2006 through a date yet to be determined, and attorney's fees. A copy of this pre-hearing order with the

appropriate amendments noted thereon was made Commission's Exhibit No. 1 to the hearing.

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

1. On all relevant dates in 2006, the relationship of employee-self insured employer-TPA existed between the parties.
2. The appropriate weekly compensation rates are \$244.00 for total disability and \$183.00 for permanent partial disability.
3. The claim is controverted in its entirety.

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

1. whether the claimant sustained compensable injuries to her left arm and wrist as the result of cumulative trauma during the mid to latter part of 2006.
2. The claimant's entitlement to the payment of medical expenses, temporary total disability from October 25, 2006 through a date yet to be determined, and attorney's fees.

In regard to these issues, the claimant contends:

"Claimant was injured in approximately March 17, 2006. Her left arm and wrist (and lumps on her arms) were injured by picking up chickens with left hand and putting on hangers above head to cut."

In regard to these issues, the respondent contends:

"The respondents contend the claimant did not sustain an injury arising out of and in the

course of her employment. The respondents contend, among other things, that there are no measurable and objective findings to support a determination of a compensable injury as defined by the Arkansas Workers' Compensation Act or that any conditions were not proximately caused by the claimant's employment."

DISCUSSION

I. COMPENSABILITY

The central issue in this case is whether the claimant sustained "compensable injuries" to her left arm and hand. The claimant contends that these injuries were not due to any specific incident, but were rather the result of cumulative trauma from her day to day employment activities. The burden rests upon the claimant to prove all of the elements necessary to establish these alleged compensable injuries.

First, the claimant must show that her alleged compensable injuries satisfy the requirements of Ark. Code Ann. §11-9-102(4)(D). This subsection requires that the actual existence of the physical injuries or damage alleged to be compensable must be "established" by medical evidence. Further, the actual existence of the physical injuries or damage alleged to be compensable must be supported by "objective findings" as that term is defined by Ark. Code Ann. §11-9-102(16)(A)(i).

In the present case, the medical record shows that on apparently three occasions during 2006, various physicians have diagnosed the claimant as suffering from tendonitis of the left forearm. This diagnosis was first made by Dr. David Dean, one of the respondent's company physicians, on March 24, 2006. This would

have been less than two months following the claimant's employment by this respondent. Dr. Dean indicated that the date of injury or onset of symptoms was reported as March 17, 2006. This initial diagnosis of tendonitis involved both of the claimant's upper extremities with the left being more severe than the right. The reports of Dr. Dean record no objective findings to support his diagnosis and this diagnosis would appear to be based entirely on the claimant's subjective complaints.

On March 30, 2006, the claimant was seen by Dr. Rebecca Lewis, another company physician. At that time, she was apparently asymptomatic and Dr. Lewis opined that her bilateral tendonitis had "resolved".

There are no other medical reports or records until Dr. Lewis' reports of October 20, 2006. At that time, the claimant was once again voicing complaints involving left forearm pain. However, Dr. Lewis noted that her physical examination of the claimant showed no evidence of tendonitis. She again opined that the claimant's left forearm tendonitis had "completely resolved". She further attributed the claimant's current complaints of pain to a non employment related lipoma on her left forearm. Dr. Lewis noted that she had previously given the claimant a referral to have the lipoma surgically removed, but the surgeon had refused to accept treatment of the claimant. Thus, Dr. Lewis gave the claimant further information as to where she could go for further evaluation and excision of the lipoma.

Two days later on October 22, 2006, the claimant appeared at the emergency room of Siloam Springs Memorial Hospital. At that time, it was noted that she was complaining of pain with flexion of her left wrist and pain in the left forearm at the site of a subcutaneous "knot" (apparently the lipoma). No objective findings other than the observation of this "knot" were noted.

The claimant was next seen at the St. Francis Clinic on November 27, 2006. At that time, she was complaining of discomfort in her left lower arm, including night pain. The physical examination performed contained no mention of objective findings. However, based upon the claimant's subjective complaints, a diagnosis of left arm tendonitis and questionable carpal tunnel was made.

The claimant was last seen at the Community Physicians Group or St Francis Clinic on December 7, 2006. On this visit, she was complaining of pain in her left groin extending down into her leg, and an evaluation and treatment of these complaints was undertaken. In passing, it was noted that the claimant's left arm was better.

The medical evidence "establishes" the diagnosis of the existence of tendonitis involving the claimant's left arm, during 2006. However, there is no evidence of any "objective findings" to support this diagnosis, and the diagnosis appears to be based solely on subjective complaints. The only objective finding noted, involving the claimant's left arm, is the observation of a painful or tender "knot" that was diagnosed as a lipoma. The presence of this knot would not reasonably support the diagnosis of tendonitis.

From the claimant's testimony and the other evidence presented, this lipoma has not been surgically removed and remains an area of discomfort through the present time.

In summary, the diagnosed condition of a lipoma on the claimant's left forearm does satisfy the requirements for a "compensable injury" that are found in Ark. Code Ann. §11-9-102(4)(D). The diagnosed condition of left forearm tendonitis and possible carpal tunnel syndrome do not satisfy all of the requirements of this subsection. The actual existence of the lipoma is not only established by medical evidence, but is supported by purely objective findings. The actual existence of the left forearm tendonitis and possible carpal tunnel syndrome may be established by the medical evidence, but is not based upon or supported by any "objective findings". Rather, the diagnosis of the existence of these possible conditions is based solely upon the claimant's subjective complaints and some of the subjective testing.

Next, the claimant must prove that the medically established and objectively supported physical injuries or defects to her left arm (the lipoma), satisfies all of the definitional requirements for a "compensable injury" that are contained in Ark. Code Ann. §11-9-102(4)(A)(ii)(a). These statutory requirements are:

- (1) The injury or condition must arise out of and occur in the course of the employment;
- (2) The injury or condition must cause internal or external physical harm to the body;
- (3) The injury or condition must be caused by rapid repetitive motion or be in the form of carpal tunnel syndrome.

There is no expert medical evidence that the knot or lipoma on the claimant's left forearm was in any way caused, precipitated, or aggravated by her employment with this respondent, particularly her employment related duties that required rapid repetitive motion of her left upper extremity. In fact, there is no evidence at all to support such a causal relationship. A lipoma is simply a subcutaneous fatty tumor. It would not be reasonably considered to be caused by or associated with any type of stress or trauma.

After consideration of all the evidence presented, it is my opinion that the claimant has failed to prove by the greater weight of the credible evidence that she sustained a "compensable injury" to her left arm and/or wrist while in the employ of this respondent.

II. BENEFITS

Even though I have found that the claimant has failed to prove that she sustained a "compensable injury" to her left forearm and wrist, the respondent will remain liable for the expense incurred as the result of medical services provided to the claimant by and at the direction of Dr. Dean and Dr. Lewis. These two individuals were the company physicians to whom the claimant was sent by the respondent. Thus, under the rule established in Southern Hospitalities dba Quality Inn v. Britain, 54 Ark. App. 318, 925 S.W. 2nd 410 (1996), the respondent is liable for the medical expenses incurred for such services, subject to the medical fee schedule established by this Commission.

FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. On all relevant dates, the relationship of employee-self insured employer-third party administrator existed between the parties.

3. On all relevant dates, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$244.00 for total disability and \$183.00 for permanent partial disability, should such benefits have been appropriate.

4. The claimant has failed to prove by the greater weight of the credible evidence that she sustained "compensable injuries" to her left arm and wrist during her employment with this respondent. Specifically, she has failed to prove by medical evidence, which is supported by objective findings, the actual existence of any physical injury or damage to her left arm or wrist that arose out of and occurred in the course of her employment with the respondent, caused internal or external harm to her body, and was caused by rapid repetitive motion.

5. The respondent has denied the occurrence of any compensable injury to the claimant's left arm and wrist and have controverted this claim in its entirety.

ORDER

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

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE