

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F703215

GLORIA J. KNIGHTEN, EMPLOYEE	CLAIMANT
WILLOWBEND NURSING CENTER, EMPLOYER	RESPONDENT
CANNON COCHRAN MANAGEMENT SERVICES, INC., INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED OCTOBER 29, 2007

Hearing before Chief Administrative Law Judge David Greenbaum on October 5, 2007, at Marion, Crittenden County, Arkansas.

Claimant appeared *pro se*.

Respondents represented by Mr. Michael E. Ryburn, Attorney-at-Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted October 5, 2007, to determine whether the claimant sustained a compensable injury within the meaning of the Arkansas workers' compensation laws.

A prehearing conference was conducted in this claim on September 5, 2007, and a Prehearing Order was filed on said date. At the prehearing conference, the parties agreed that the Commission had jurisdiction over this claim and that the claimant was an employee of Willowbend Nursing Center during a part of 2006. The parties were advised that they would be required to stipulate to the periods of employment, as well as stipulate to the claimant's average weekly wage or be prepared to document same at the hearing. At the hearing, the parties agreed that the claimant earned \$9.74 per hour which would yield an average weekly wage of

\$389.60, entitling the claimant to compensation rates of \$260.00 per week for temporary total disability and \$195.00 per week for permanent partial disability in the event her claim was found compensable. It was further agreed that the claimant worked for the employer through September 9, 2006.

At the hearing, the parties announced that the issues, as well as their respective contentions were properly set out in the Prehearing Order. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1" without objection.

By agreement of the parties, the primary issue presented for determination concerned compensability. If overcome, claimant's entitlement to associated benefits must be addressed.

Claimant contended, in summary, that she sustained a compensable injury to her left hand and wrist while operating a buffing machine during April, 2006; that she reported the injury to her supervisor, Charlotte Baskin, at which time she sought medical treatment; that she subsequently sought additional medical treatment on June 18, 2006; that respondents should be held responsible for all hospital, medical, and related expenses; that she was entitled to temporary total disability benefits beginning when she first missed work in April, 2006, and continuing through the present, maintaining that her healing period had not ended; while reserving entitlement to permanent disability benefits, if applicable. The claimant acknowledged that she went to work for another employer, Southland Greyhound Park, on or about August 23, 2006, and that some of her medical expenses had

been paid under a health insurance policy provided by the subsequent employer. As reflected by the stipulations, the claimant continued working for respondent herein through September 9, 2006, in addition to her employment with Southland which will be discussed further below.

The respondents contended that the claimant cannot prove that she sustained an injury as the result of a specific incident arising out of and during the course of her employment; and, if the claimant's injury was an alleged, gradual injury, that the claimant's job activities were not rapid and repetitive while controverting the claim in its entirety. Respondents further contended that the claimant did not report a work-related injury to her hands until following her termination, maintaining that no notice of injury was given until March 27, 2007, and that it would not be responsible for benefits prior to said date. Alternatively, respondents contended that the claimant cannot prove entitlement to temporary total disability because she was working for another employer following her termination.

The claimant was the only witness to testify. The record is composed solely of the transcript of the October 5, 2007, hearing containing various medical records, specifically, a report from Dr. Guy J. L'Heureux dated November 16, 2006, which was introduced by respondents, together with several pages of records which the claimant first submitted at the hearing and which were received as a proffer as "Claimant's Exhibit A."

The claimant has been advised, on multiple occasions, of her right to legal

representation; that an attorney could not charge her a fee for representing her in a workers' compensation claim without approval of this Commission; that attorney's fees were normally awarded only out of benefits obtained in her behalf, and that she would only be responsible for a portion of the fee if an attorney was successful in obtaining benefits for her. In addition, the claimant was advised that she had the burden of proving her claim; that she was only entitled to one hearing; and that, for any reason, if she was unsuccessful, she could not request a second hearing, maintaining that the reason for any failure to prove the claim was her lack of legal representation. The claimant elected to proceed in her own behalf.

In addition, at the prehearing conference, the claimant was advised to submit copies of any medical evidence in support of her claim to both this Commission, as well as respondents' attorney immediately after the prehearing conference. The claimant failed to submit any medical evidence prior to the scheduled hearing. Because the claimant is unrepresented and due to the fact that the Prehearing Order did not direct the claimant to submit medical evidence at least seven (7) days prior to the scheduled hearing, I have considered the claimant's exhibits and will give them their appropriate weight. As will be set out further below, the medical evidence does not change the findings of fact and conclusions of law in this claim.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe her demeanor, the

following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/employer/carrier relationship existed between the parties at all relevant times through September 9, 2006, at which time the claimant earned sufficient wages to entitle her to compensation rates of \$260.00 per week for temporary total disability and \$195.00 per week for permanent partial disability in the event her claim was found compensable.
3. The claimant has failed to prove, by a preponderance of the evidence, that she sustained an injury arising out of and during the course of her employment with Willowbend Nursing Center and which was the result of a specific incident identifiable in time and place of occurrence.
4. The claimant has failed to prove, by a preponderance of the evidence, that she sustained a gradual onset injury arising out of and during the course of her employment with Willowbend Nursing Center.
5. The claimant has failed to prove, by a preponderance of the evidence, that there is a causal connection between her employment with Willowbend Nursing Center and her physical problems, need for treatment, and disability. Rather, a preponderance of the credible evidence reflects that the claimant's

physical problems and need for treatment are related to chronic progressive osteoarthritis rather than any work-related injury.

6. Respondents have controverted this claim in its entirety.

### DISCUSSION

The claimant, Gloria J. Knighten, was the only witness to testify. The claimant is fifty-two (52) years old. She has an eleventh grade education. The record reflects that the claimant worked for Willowbend Nursing Center, previously known as Johnson Hobson Nursing Home, for approximately fifteen (15) years. The claimant worked in the housekeeping department. The claimant maintained that she sustained an injury to her left hand and wrist while operating a buffing machine during April, 2006. The claimant stated that she was not required to operate a buffing machine before Charlotte Baskin purchased the business on December 1, 2006. (sic-2005) The claimant stated that as the result of stripping and waxing the floors, a knot appeared on her left wrist and her hands began swelling. The claimant reported using the buffing machine approximately four (4) times. The claimant testified that she never reported an injury until after seeking medical attention in April, 2006. The claimant stated that she was first examined and treated by one Dr. Collins, a general practitioner who is also her family physician. The claimant failed to obtain any medical reports from Dr. Collins. The claimant did not report any physical problems to her employer until after seeing Dr. Collins, at which time she advised the owner which was also her supervisor about the initial

diagnosis as reflected below:

Q I want you to tell me what you told the doctor, not what any doctor said to you, because the doctor is not here for us to examine him. So, whatever he might have said, under the rules of evidence would normally not be permissible. So I'd like for you to just tell me what you told Dr. Collins.

A I told him that I had been having problems with my hand, that a knot had come up and it was swelling, and he checked my hand and stuff and mashed on them, and he asked what kind of job was I doing. I told him I was using a buffing machine and we were striping (sic) and waxing the floors, and I told him that my hand was tender, real tender, and sore.

Q Okay. Without tell [sic] us what the doctor said, based on your visit with Dr. Collins, did you then go to your employer and report any kind of work-related injury to your employer?

A I did.

Q Would that have been the day after you went to Dr. Collins?

A The second day I went back to work, because they put me off the first day. The second day I went back to work, and I went in her office, and I said, "Charlotte --"

Q You said "her." You will have to tell us who "her" is.

A I said, "Charlotte, I need to talk to you." She told me to come in. Charlotte told me to come in. So I went in, and I told her he said I had arthritis in my hand.

Q Okay. So you told Charlotte --

A Yes.

Q -- that Dr. Collins told you that you had arthritis in your hands?

A Yes.

Q Okay. And then what did Ms. Baskin do?

A So she said, "Is you going to be able to work?" So, I said, "Charlotte," I said, --

Q Is that what Dr. Collins told my, you had arthritis in your hands?

A He told me I had arthritis in my hand, yeah.

Q And that's what you told Charlotte?

A I told Charlotte, I said, "Charlotte --"

Q Okay, hold on. Let's take it slow. At that point you still hadn't told Ms. Baskin that you had any work-related injury, is that right?

A Yes, I told her I had arth -- yeah, I told her what the doctor said.

Q Well, did the doctor tell you that the arthritis was caused by your work?

A Well, this is what he said. He said that by using the buffing machine, Dr. Collins, "By using the buffing machine you might have flared up the arthritis," because before when I was working at the nursing home and then I started working for -- under Charlotte, I didn't have no problems with my wrist or my hand.

Q Before you started working what?

A At first I was working at Johnson Nursing Home before Charlotte and them bought the nursing home. They come in December the 1<sup>st</sup> of 2006. I didn't have no pain. I didn't have -- my hand and stuff was not hurting.

Q Okay. What did Ms. Baskin do after you reported that you had arthritis? Did you tell her you thought your arthritis was related to your buffing machine?

A I told her that I thought it was related to the job.

Q And what did she tell you?

A She told me that she was going to check into workers' comp, but she never did get back to me. And she told me, she asked me, she said, Charlotte said, "Gloria," she said, "are you going to be able to work?" I said, "Ma'am, I don't know." I said, "But I would like to keep my job." She said, "Well, you ain't going to lose your job."

Q And did you keep your job?

A I kept my job until the 9<sup>th</sup> and the 25<sup>th</sup>. She fired me in September.

Q Okay, ma'am. So you continued to work from April until September, is that right?

A Yes, sir. Yes, sir.

Q Okay. And why were you fired?

A Well, Charlotte said that I had an attitude.

Q So you were fired for what she said was an attitude?

A She said it was an attitude.

Q Okay. And what did you do when she fired you?

A I went to EEOC and to the unemployment office.

Q Did you apply for unemployment?

A Yes.

Q Did you receive unemployment?

A Yes.

Q How long did you receive unemployment?

A I received unemployment until it was – I think it was July. I'm not for sure.

Q July?

A Of 2007.

Q So you received unemployment from September of '06 until July of '07?

A I think, Your Honor, I think it was. I really don't know exactly what day it was.

Q Well, how much did you receive a week in unemployment?

A \$200. It was \$207.

Q \$207 a week?

A Yes. (Tr.16-20)

As reflected by the stipulations, as well as the record, the claimant began working at Southland Greyhound Park on a part-time basis on or about August 23, 2006, which was prior to her termination by Willowbend Nursing Center. The claimant worked for Southland through on or about April, 2007, at which time she voluntarily quit apparently, due to increased problems with both hands.

On cross-examination, the claimant acknowledged that initially she only claimed a left hand injury because it was giving her the most problems, but that she subsequently developed problems with both hands. The claimant further admitted that eventually she began working at Southland full-time, again performing housekeeping duties, including lifting heavy objects which caused her to have increased physical problems including swelling in both hands. Again, the claimant terminated her employment at Southland because of the increased physical problems, at which time she sought treatment from Dr. Guy L'Heureux. (Tr.28-31)

The only medical report from Dr. L'Heureux was introduced by the respondents. Dr. L'Heureux's November 16, 2006, report is set out in its entirety below:

CHIEF COMPLAINT: Pain distal forearms and wrists

PAST MEDICAL HISTORY: Positive for hypertension, thyroid disorder and arthritis

FAMILY HISTORY: Positive for hypertension, heart disease and arthritis

SURGERY: Surgery on her feet, fibrous tumor removed.

ALLERGIES: None known to any medication

MEDICATION: HCTZ, Lotrel, Synthroid and potassium

SOCIAL HISTORY: She is single. She works in the Department of Housekeeping for Southland Racing. She doesn't smoke or drink alcohol.

HISTORY: This 50 year old black female is coming today for evaluation of pain on the dorsum aspect of the distal third of the forearms and at the wrists. The patient says she is borderline diabetic. This started in June 2006. At that time she was working for another company and had been using a buffering machine for several days in a row. She started to have pain in her hands and progressively notice swelling on the distal third of her forearms dorsally, first on the left hand and then the right hand. She has used Ace bandage on her wrist especially at night and she has been provided with some Indocin tid but so far this has not decreased the pain and swelling. She is having difficulty to do her regular work.

REVIEW OF SYSTEMS: ENT and visual: Negative. Tegumentary: Negative. Cardiovascular: Positive for hypertension. Pulmonary: Negative. Hormonal: Positive for borderline diabetes regulated by diet. Urinary tract: Negative. Neurology and psychiatric: Negative. No other complaints in the rest of the musculoskeletal system except aches and pains of every day.

PHYSICAL EVALUATION: She appears to be in good general condition. She is alert and oriented. Blood pressure 148/96, pulse 77 and respiration 14. She is 5'3" and weighs 193 pounds. The patient is right handed. She has good range of motion of shoulders and elbows. She has some swelling on the dorsum aspect of the distal forearm along the extensor tendon right and left. There is tenderness at palpation of those tendons and distal muscles. There is also slight swelling on the dorsum aspect of her wrists and hands. There is tenderness at palpation of the extensor tendons. There is no pain on the extensor tendons of the thumb right and left. There is full range of motion of the thumbs. As far as the wrists she has slight limitation of motion of extension of her wrists and slight limitation of flexion of her wrists. There is good radial and ulnar deviation. The patient has what appear to be short and fairly prominent ulnas with no clear evidence of deformation like the Madelung deformity. As far as the fingers she has full range of motion, but when she does full flexion she feels tightness on the extensor tendons on the dorsum aspect of the wrists and hands. She has fairly good grip though although there is pain. She has good circulation in her hands and good sensitivity in her fingers.

I proceed to review x-rays done at CMH May 14 right and left wrists. They do show a slight ulnar positive variance right and left. No other abnormality.

DIAGNOSIS: Tenosynovitis of the extensors of the wrists.

This is explained to the patient and my recommendation is wrist-forearm immobilizer bilateral. She will wear it one day on one side and the other day on the other side alternating to minimize her problem but at the same time give her a chance to continue to work. She will wear the immobilizers at night. She will use heat. She is given a prescription of Naprozen 500 one bid with meals. She is told about the possibility of GI side effect and to quit if it does happen. If she is doing well with that once she is through with that prescription she will continue with Aleve one 3 times a day with food as needed. She will use heat on her wrists and hands. I will not give her a specific appointment. If she has not improved substantially in about three weeks I would like to see her again. She is also given a prescription of Tylenol #3, #30 one q.6-8h if pain no refills, for example at night or after a more strenuous day at work. (Resp. Ex. 1)

The claimant was next examined and treated by Dr. Samuel Meredith, an orthopedic surgeon in Memphis, Tennessee, who apparently took over for Dr. L'Heureux following his retirement. Dr. Meredith's May 2, 2007, chart notes follow:

Previous impression: OA CMC (and initially de Quervains)

Time post injury/onset: 12 months

Time post op:

Previous DOS (time since): 7 weeks, CMC joints injected

Previous RX:

New studies: repeat films show progressive early osteoarthritis on the left

Current status: initially she had satisfactory relief from her injections, but she started a new job at the dog track, and repetitive lifting and sweeping and other housekeeping manual activities have caused her thumbs to ache, especially the left

Exam: She sits in the exam room constantly rubbing the base of the left thumb. On the left she has 4+ CMC pain and 2+ pain and tenderness over the dorsal compartment. On the right she has zero pain over the first dorsal compartment in two to 3+ pain and tenderness over the CMC joint.

New Ideas: she must understand that this is a chronic condition which will continue to be aggravated by repetitive and stressful mechanical activity of the hand and wrist. My idea is for her to pursue vocational rehabilitation.

Plan: Referred to vocational rehabilitation, new CMC thumb splints, Medrol Dosepak, one week cessation of work, ongoing work restrictions, recheck in one week. (Cl. Ex. A, p.5)

Dr. Meredith's final report dated July 25, 2007, follows:

This lady returns with her MRI and we will finalize her evaluation with a rheumatology screen which we have never done. Basically she has shown evidence of CMC arthritis and DeQuervain's syndrome. This has been resistant to treatment and modification of activities.

My main concern and problem with this lady is that her pain complaints and her pain behavior or [sic] so much off the radar screen when correlated with her objective pathology. The longer I see her the worst this gets and the more global her responses get as far as tenderness and perceived disability are concerned.

Her MRI does show some chronic changes at the lunate consistent with lunate impaction syndrome. This is in addition to the clinical impressions in the past.

Physical examination is difficult due to pain complaints and positive responses to palpation globally over the distal forearm wrist and hand.

I told her frankly that I did not recommend surgery under these circumstances. I told her that we would do a final screening for any rheumatologic disease and then suggest that she get another opinion or approach her problem from some other standpoint. (Cl. Ex. A, p.6) (Emphasis supplied)

It is well-settled that claimant has the burden of proving the job-relatedness of any alleged injury, without the aid of any kind of presumption in her favor. *Pearson v. Faulkner Radio Service*, 220 Ark. 368, 247 S.W.2d 964 (1952); *Farmer v. L.H. Knight Company*, 220 Ark. 333, 248 S.W.2d 111 (1952). The burden of proof claimant must meet is preponderance of the evidence. *Voss v. Ward's Pulpwood Yard*, 248 Ark. 465, 425 S.W.2d 629 (1970). Under prior law, it was the

duty of the Commission to draw every legitimate inference in favor of the claimant and to give claimant the benefit of the doubt in making factual determinations. However, current law requires that evidence regarding whether or not claimant has met the burden of proof be weighed impartially, without giving the benefit of the doubt to either party. Arkansas Code Annotated §11-9-704(c)(4); *Wade v. Mr. C.Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Fowler v. McHenry*, 22 Ark. App. 196, 737 S.W.2d 663 (1987).

In the present claim, the claimant does not contend that her injury was caused by a specific incident and identifiable by time and place of occurrence. Instead, she seemed to relate her complaints to a gradual onset left hand injury which she maintained was caused by running a buffing machine. Accordingly, in order to receive benefits, the claimant must satisfy all of the following requirements:

- (1) Proof by a preponderance of the evidence of an injury arising out of and in the course of his employment;
- (2) Proof by a preponderance of the evidence that the injury cause external or internal physical harm to the body;
- (3) Medical evidence supported by objective findings as defined in A. C. A. §11-9-102(16);
- (4) Proof by a preponderance of the evidence that the injury was caused by rapid repetitive motion; and,
- (5) Proof by a preponderance of the evidence that the injury was the major cause of disability or need for treatment.

If a claimant fails to establish by a preponderance of the evidence any of the requirements for establishing compensability of the injury alleged, she fails to

establish compensability of the claim, and compensation must be denied. *Lay v. United Parcel Service*, 58 Ark. App. 35, 944 S.W.2d 867 (1997).

There is no evidence whatsoever that the claimant's duties as a housekeeper for Willowbend Nursing Center involved any duties which required rapid repetitive motion. Further, the claimant's course of conduct and work history is totally inconsistent with the immediate claim. The claimant did not file a claim at any time contemporaneous with her alleged injury. After her termination from employment for reasons unrelated to an alleged injury, the claimant applied for, and began receiving unemployment compensation, indicating that she was ready, willing, and able to work. In fact, the claimant began working for a different employer, Southland Greyhound Park, prior to her termination by the employer herein. Thereafter, the claimant started working full-time at Southland performing duties which aggravated her pre-existing arthritis. In fact, there is no credible medical evidence that the claimant's symptoms manifested themselves before going to work at Southland. Suffice it to say that it would require sheer speculation and conjecture to attribute the claimant's problems to a work-related injury at Willowbend Nursing Center. Conjecture and speculation, however plausible, cannot be permitted to supply the place of proof. *Dena Construction Company v. Hearndon*, 264 Ark. 791, 575 S.W.2d 155 (1979); *Arkansas Methodist Hospital v. Adams*, 43 Ark. App. 1, 858 S.W.2d 125 (1993).

This claim turns entirely upon the claimant's credibility. A claimant's

testimony is never considered uncontroverted. The testimony of an interested party is always considered to be controverted. *Lambert v. Gerber Products Co.*, 14 Ark. App. 88, 684 S.W.2d 842 (1985); *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994); *Continental Express v. Harris*, 61 Ark. App. 198, 965 S.W.2d 84 (1998).

The burden of proving the job-relatedness of an alleged injury rests with the claimant. The claimant's course of conduct in not seeking timely medical treatment, applying for unemployment compensation rather than filing a workers' compensation claim, as well as her work history after leaving respondent's employment makes her claim extremely suspect. In the event the claimant sustained any injury with respondent herein, which I do not find, it was nothing more than a temporary aggravation of a pre-existing condition and did not result in the need for medical treatment or a period of disability. After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant has failed to prove that she sustained a compensable injury within the meaning of the Arkansas workers' compensation laws. Accordingly, the within claim is hereby respectfully denied and dismissed.

IT IS SO ORDERED.

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DAVID GREENBAUM  
Chief Administrative Law Judge