

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F304459

MARK LAKE,
EMPLOYEE

CLAIMANT

WAL-MART ASSOCIATES, INC.,
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED JANUARY 16, 2007

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Searcy, White County, Arkansas.

The claimant was PRO SE.

The respondent was represented by HONORABLE KATHRYN HALL, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on October 24, 2006 in Searcy, Arkansas. A prehearing order was entered in this case on August 17, 2006. 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 either in the prehearing order or at the start of the hearing and are hereby accepted:

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

2. An employee-employer relationship existed between the claimant and the respondent in April of 2003 and at all other times relevant to this claim.
3. The claimant's average weekly wage for his period of employment at Wal-Mart Associates was \$416.40 per week.

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

1. Compensability of bilateral carpal tunnel syndrome.
2. Temporary total disability.
3. Medical expenses.

The record consists of the October 24, 2006 hearing transcript and the exhibits contained therein.

DISCUSSION

1. Respondent's Objection To The Admissibility Of Claimant's Proffered Exhibit No. 2

The claimant contends that he sustained bilateral carpal tunnel syndrome causally related to his employment at a Wal-Mart Distribution Center in 2003. The respondent objects to the admissibility of November 1, 2004 and December 15, 2004 office notes from Dr. James McCoy, who

performed the claimant's carpal tunnel syndrome surgeries, on the basis that these reports relate solely to a hip condition, and not to the carpal tunnel syndrome at issue. The claimant explained that this exhibit is offered on the issue as to whether or not Dr. McCoy can express an opinion within a reasonable degree of medical certainty. I find that the exhibit will be admitted into the record for that purpose.

2. Compensability Of The Claimant's Bilateral Carpal Tunnel Syndrome

A claimant seeking benefits for an allegedly work related carpal tunnel syndrome injury must prove by a preponderance of the evidence that (1) the carpal tunnel syndrome arose out of and in the course of employment; (2) the injury caused internal or external physical harm to the body that required medical treatment or resulted in disability or death; and (3) the injury was the major cause of the disability or need for treatment. In addition, the compensable injury must be established by medical evidence supported by objective findings. Freeman v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001).

In the present case, the claimant went to work at a Wal-Mart distribution center as a shipping dock loader on

Tuesday, April 8, 2003. Thereafter, he worked eight shifts at the Wal-Mart distribution center between April 8, 2003 and Friday, April 18, 2003. According to the April 21, 2003 office note of Dr. Michael Justus, the claimant became aware of numbness in his hands on the prior Friday or early Saturday morning. Dr. Justus' impression was mild tendinitis secondary to repetitive motion in a new job.

The claimant explained that his primary job duties at the distribution center involved loading freight onto trailers. The claimant testified that he loaded freight at a rate of approximately one piece every five to ten seconds. The claimant testified that on the last night that he worked before his symptoms started, he performed his regular work loading, then spent approximately two hours unloading a trailer, and spent an hour or two stacking pallets.

The claimant testified that his symptoms started on April 19, 2003. His shift ended at three in the morning. He went home and slept approximately seven hours and woke up with pain.

Dr. Peggy Brown performed a nerve conduction study on June 17, 2003 indicative of mild to moderate bilateral carpal tunnel syndrome. The claimant thereafter came under the treatment of Dr. James McCoy, who performed a left

carpal tunnel release on August 4, 2003 and a right carpal tunnel release on September 15, 2003.

The evidence which most supports the claimant's claim that his bilateral carpal tunnel syndrome arose out of his employment duties at the Wal-Mart Distribution Center includes Dr. Terrence Yates' March 10, 2003 physical examination report containing no mention of any hand problems or symptoms approximately one month before the claimant went to work at the distribution center, and Dr. Justus' April 21, 2003 impression that the claimant was experiencing mild tendinitis at that time secondary to repetitive motion in his new job.

Nevertheless, I note that the claimant's treating surgeon, Dr. McCoy indicated on September 15, 2006 in response to a letter from the respondent's attorney that, in his opinion, the claimant's right and left carpal tunnel syndrome were not caused by his 13 days of work at Wal-Mart¹, as opposed to other factors, such as the claimant's age, weight, and labor intensive work history. In response

¹I note that the claimant was employed by Wal-Mart for 13 days before Dr. Justus first saw the claimant with bilateral hand symptoms. The claimant actually only worked eight shifts during that 13 day period. The claimant continued to work for Wal-Mart thereafter without break with ongoing symptoms until his first surgery on August 4, 2003.

to the question "What, in your opinion, is the cause [sic] Claimant's right and left carpal tunnel syndrome?", Dr. McCoy wrote "Idiopathic Possibly Traumatic/Overuse Possibly Toxic".

The Commission has the discretion to decide what weight to give medical opinions. Questions of credibility and the weight and sufficiency to be given the evidence are matters within the province of the Commission. Swift-Eckrich, Inc. v. Brock, 63 Ark. App. 118, 975 S.W.2d 857 (1998). Medical opinions must be stated within a reasonable degree of certainty. Crudup v. Regal Ware Inc., 341 Ark. 804, 20 S.W.3d 791 (2001); Ark. Code Ann. § 11-9-102(16)(B). Expert opinions based on "could", "may," or "possibly" lack the definiteness required to prove causal connection. Frances v. Gaylord Container Corp., 341 Ark. 527, 20 S.W.3d 280 (2000). Additionally, the Commission is not bound by a doctor's opinion which is based largely on facts related to him by a claimant where there is no sufficient independent knowledge upon which to corroborate claimant's claim. Roberts v. Leo-Levi Hospital, 8 Ark. App. 184, 649 S.W.2d 402 (1983). However, where a medical opinion is sufficiently clear to remove any reason for the trier of fact to have to guess at the cause of the injury, that

opinion is stated within a reasonable degree of medical certainty. Huffy Service First v. Ledbetter, 76 Ark. App. 533, 69 S.W.3d 449 (2002), citing Howell v. Scroll Tech., 343 Ark. 297, 35 S.W.3d 800 (2001).

Applying these standards to the present case, I find that Dr. McCoy's answers do not lead me to guess as to his opinion on whether or not the claimant's work at Wal-Mart before the claimant's symptoms started caused the claimant's right and left carpal tunnel syndrome. I find that Dr. McCoy has adequately stated an opinion within a reasonable degree of medical certainty that the claimant's right and left carpal tunnel syndrome were not caused by his 13 days of employment by Wal-Mart before Dr. Justus recorded symptoms. In addition, I note that Dr. Justus' initial impression of mild tendinitis secondary to repetitive motion in a new job was made prior to the claimant's nerve conduction study indicative of carpal tunnel syndrome, and therefore does not state an opinion as to whether or not the claimant's later diagnosed carpal tunnel syndrome was in fact caused by repetitive motion in the claimant's new job.

Under the circumstances presented in this case, I accord the medical opinion of the claimant's treating surgeon, Dr. James McCoy, great weight. Based on Dr.

McCoy's opinion provided on September 15, 2006, I find that the claimant has failed to establish that either his right or left carpal tunnel syndrome was caused by his employment at Wal-Mart.

Because I find that the claimant has failed to establish by a preponderance of the evidence that his carpal tunnel syndrome at issue arose out of his employment at Wal-Mart, I find that the claimant has failed to establish by a preponderance of the credible evidence that he sustained a compensable carpal tunnel syndrome injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

2. An employee-employer relationship existed between the claimant and the respondent in April of 2003 and at all other times relevant to this claim.

3. The claimant's average weekly wage for his period of employment at Wal-Mart Associates was \$416.40 per week.

4. The claimant has failed to establish by a preponderance of the credible evidence that he sustained compensable bilateral carpal tunnel syndrome injury. Specifically, the claimant has failed to establish by a preponderance of the evidence that his bilateral carpal

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tunnel syndrome arose out of his employment duties at Wal-Mart.

ORDER

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

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge