

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F610534 (8/31/06)**

<b>EARLENE NELSON, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>SODEXHO, EMPLOYER</b>	<b>RESPONDENT</b>
<b>INSURANCE CO.- STATE OF PENNSYLVANIA, CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED AUGUST 7, 2007**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on July 6, 2007, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE GARLAND L. WATLINGTON, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE FRANK B. NEWELL, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted in the above-style claim to determine the claimant's entitlement to workers's compensation benefits. On May 15, 2007, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the afore. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Earlene Nelson, the claimant, coupled with medical reports and other documents comprise the record in this claim.

## DISCUSSION

Earlene Nelson, the claimant, with a date of birth of August 4, 1950, completed the 9<sup>th</sup> grade in Senath Hornerville, Missouri. Claimant's testimony reflects that prior to her employment by respondent she had been self-employed caring for children in her home. While the claimant now takes medication, a pill two time per day, for her diagnosed diabetes, she denies that she was taking any medication prior to her injury.

Claimant commenced her employment with respondent on August 18, 2006, as a grill cook. Respondent-employer is located on the campus of Arkansas State University. Claimant's shift started at 3:30 p.m. and continued until 9:30 p.m. Claimant is right hand dominate.

Claimant asserts that she suffered an injury to her left hand while performing employment duties for respondent, which serves as the basis for the present claim. While respondent acknowledged accepting the claimant's claim initially and paying for medical visits on two (2) occasions totaling \$307.26, they now controvert the compensability of the claim.

In describing the mechanics of her August 31, 2006, injury growing out of her employment with respondent-employer, claimant testified:

Well, I was working at night and the utensils were laying on the grill, and I walked over there. I thought the grill was out cause there wasn't no fire burning in it, and it was laying on there, and I went to pick it up, you know, to turn over a hamburger, and when I picked it up it was hot, an dit just, you know, stuck to my hand, you know, melted the glove was on my hand. (T. 8).

Claimant explained that she was wearing a rubber glove. The testimony of the claimant reflects that she reported the injury to the supervisor over the kitchen the night of the injury, Harold Qualls, who put some mustard on the burn, told her to go home, and if she was not feeling any

better the next day to go to the doctor. Claimant described the burn to her left hand as burns to “most all my fingertips, burned a little bit in the palm of my hand” . (JX #3, p. 13).

The claimant was seen at First Care Stadium Clinic on September 1, 2006, by Dr. Terry Kaczynski relative to her left hand burn. Claimant estimates that she was seen by Dr. Kaczynski on two or three occasions, during which time she was provided a prescription topical cream and possibly some pain pills. (JX. #3, p. 15-16). The testimony of the claimant reflects that she was also seen by physicians at NEA Clinic relative to her left hand injury. Claimant maintains that the doctor at the NEA Clinic wanted to refer her to a specialist for further treatment, however respondents denied her claim and she was unable to obtain the treatment due to a lack of money.

Claimant asserts that she continues to experience residuals of her injury such that she need to be seen by a specialist. Claimant testified that she lacks grip strength in her left hand. The testimony of the claimant reflects that she has not worked any place since her August 31, 2006, injury. Claimant concedes that presently, she is able to work. The testimony of the claimant reflects that she feels that for a period of three (3) months following the injury she was unable to work.

The testimony of the claimant reflects that within three (3) months of her injury she was capable of returning to respondent and resuming work, or going back and doing day care work in her home. Claimant worked less than a forty (40) hour week during her employment with respondents. Claimant acknowledged that she never talked with anyone at respondent about return to work. In terms of her conversation with John Nichols, the manager of respondent-employer, claimant testified:

This is what I told him. I told him I needed more treatment

with my hand because when I get close to a fire it would burn, if they could put me on another job and there was nothing open, if they could put me in another job get me out of the kitchen where it wouldn't burn. (JX #3, p. 20).

Claimant asserts that Mr. Nichols told her that when a job comes up he would give it to her.

In January 2007 claimant underwent surgery on her left knee as a result of an accidental fall on a icy street. Claimant denies that she hurt any other part of her body in the accidental fall.

The claimant underwent an EMG study at the direction of Dr. McGrath, which resulted in a diagnosis of carpal tunnel syndrome in her right wrist. The testimony also reflects that the claimant has been medicaid eligible for six to seven years. Claimant has been receiving Social Security disability benefits for six to seven years relative to her back. The testimony of the claimant reflects that she presently receives \$294.00, in Social Security disability benefits and \$256.00, in SSI benefits. Claimant noted that normally she receive in excess of \$600.00, in Social Security benefits, however her benefits have been reduced due to her earnings during her employment with respondent-employer. (JX. #3). Claimant testified that her right hand does not prevent her from working.

The medical in the record reflects that the claimant was seen at the First Care-Stadium Clinic on September 1, 2006, relative to the burn she received the previous night to her right [left] hand at work. The clinic note relative to the visit further reflects:

**HPI:** The patient is a 56 year-old female here with burn on her right hand from work last night. She works as a grill cook at ASU and someone put some tongs off to the side after they were on the grill and they were hot and she did not realize it. She went to touch them. She had rubber gloves on and the rubber stuck to her hands. She got it off and she has pain to the pads of her fingers ever since this happened last night. She did not sleep all night. She wants something for pain and something to care of the burn. She denies any fever or chills. No health problems.

**PHYSICAL EXAMINATION**

The patient has erythema to the distal pads of all four fingers and thumb. I see no blisters. No break in the skin. No streaking. No swelling of hand. Lungs are clear.

**IMPRESSION/PLAN:**

1. First degree burn to the fingers of the right hand as described

Silvadene cream daily.  
Dressing applied today.  
Hydrocodone for pain.  
Off of work today. (JX #1, p. 3).

The claimant was seen by Dr. Terry Joseph Kosinski during the September 1, 2006, visit to First Care-Stadium Clinic. An off-work slip authored by Dr. Kosinski in connection with his medical treatment of the claimant reflects that she was excused from work on September 1, 2006, and was released to return to work without restrictions on September 5, 2006. (JX. #1, p. 4).

The claimant was again seen by Dr. Kosinski on September 5, 2006, at which time she relayed that her injured hand felt like it was swollen. The September 5, 2006, clinic note reflects, in pertinent part:

**HIP:** The patient is a 56 year-old female here with follow up on her burn of her right fingers. She was seen a few days ago having sustained burns to the finger tips of the right hand and we treated her with a Silvadene dressing. She is better in that respect.

Now she is having significant pain to the palmar aspect of her right hand and her distal forearm. She has no idea why. She does not know if maybe when she pulled her hand back if she struck something. It happened so quickly. The pain is there. It hurts to use and move her hand. No blistering to her fingertips. No fever. No chills.

\* \* \*

**PHYSICAL EXAMINATION**

Exam of the right arm reveals the pads of the fingertips are healing appropriately. There is minor erythema there but no blisters that I can

appreciate. She has pain to palpation to the right palmar aspect as well as to the distal forearm but I cannot appreciate any skin discoloration or swelling. Skin is intact. Neurovascular exam is intact. (JX. #1, p. 5).

Dr. Kosinski authored an off work slip relative to his September 5, 2006, examination of the claimant reflecting that the claimant was excused from work on September 5, and September 6, 2006. Further, the off work slip noted that the claimant “may return to work” on September 7, 2006, with no restrictions.

The claimant was again seen by Dr. Kosinski on September 11, 2006, for recheck of burn to her hand and an inability to grasp objects. An off work slip generated by Dr. Kosinski in conjunction with the September 11, 2006, visit of the claimant reflects:

Our patient Earline Nelson was seen in the clinic on : 09/11/06.

Earline is unable to work at this time. Please excuse from work for The following dates: She needs to be off work until after she sees orthopedic physician. At this time we do not know the dates because we have to get appointment authorized by work comp. Can give another letter when we know the date. (JX. #1, p. 13).

The medical in the record reflects that following the claimant’s September 11, 2006, visit to Dr. Kosinski, she was not again seen by a physician until October 24, 2006, at which time she was seen by Dr. Joe McGrath at NEA Clinic. The October 24, 2006, office note of Dr. McGrath relative to the claimant’s visit reflects, in pertinent part:

**SUBJECTIVE:** Ms. Nelson is a 56-year-old black female who comes today with complaints of right palm pain on her right hand. She burned herself about three weeks ago she said. She said it blistered up and it healed, but she still has a burning sensation deep within her hand.

**PHYSICAL EXAM:** . . . . Right hand has very good range of movement. There are no obvious blistering.

## **ASSESSMENT:**

1. Right hand burn, pretty much resolved.

**PLAN:** We are going to give her a little Silvadene to use q. daily for about a week to see if this helps with the burning sensation that she is still having. She was given a prescription for hemoglobin A1C, chem 14, CBC, and total cholesterol. She needs to followup in six months for hemoglobin A1C and a chemistry panel. She says she has plenty of her medicines, which include Lisinopril and Metformin. (JX. #1, p. 16).

The claimant was again seen by Dr. McGrath on November 2, 2006, with complaints of right hand pain and numbness. Following his examination of the claimant during the November 2, 2006, visit, Dr. McGrath assessed, "right hand numbness and pain, probably carpal tunnel syndrome". Claimant was provided an wrist splint and an NCV/EMG study was scheduled. (JX. #1, p. 18). The November 13, 2006, NCV/EMG study relative to the claimant disclosed the presence of mild carpal tunnel syndrome at the right wrist. (JX. #1, p. 19-21).

The Workers' Compensation First Report of Injury completed on August 31, 2006, by Frank Barton, in connection with the claimant's accident reflects that the injury was to the claimant's left hand. (JX. #2). Mr. Barton also completed an Injury Investigation Report on August 31, 2006, in connection with the claimant's injury. (JX. #1, p. 1).

After a thorough consideration of all of the evidence in this record, to include the testimony of the claimant, review of the medical reports and other documentary evidence, application of the appropriate statutory provisions and case law, I make the following:

## **FINDINGS**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On August 31, 2006, the relationship of employee-employer-carrier existed

among the parties.

3. On August 31, 2006, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$131.00, for temporary total/permanent partial disability benefits.

4. On August 31, 2006, the claimant sustained a burn injury to her left hand arising out of and in the course of her employment with respondents.

5. The claimant was temporarily totally disabled for the period September 1, 2006, September 5-6, 2006, as a result of the burn injury she suffered to her left hand on August 31, 2006.

6. The claimant has failed to sustain her burden of proof by a preponderance of the evidence that she remained temporarily totally disabled subsequent to September 7, 2006, as a result of the compensable burn injury to her left hand.

7. The claimant has failed to sustain her burden of proof by a preponderance of the evidence that medical treatment rendered to her subsequent to September 7, 2006, was reasonably necessary in connection with her compensable left hand burn injury of August 31, 2006.

### **CONCLUSIONS**

The claimant asserts that she suffered a burn injury to her left hand on August 31, 2006, within the course and scope of her employment with respondents which required medical treatment and rendered her totally incapacitated from engaging in gainful employment for a period of approximately three (3) months. Claimant seeks corresponding temporary total disability and medical benefits growing out of the injury to her left hand as well as controverted attorney fees. While respondents initially paid medical benefits relative to the claimant's burn

injury, they now deny the compensability of the claim.

The present claim is one governed by the provisions of Act. 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision. The claimant has asserted that she sustained a specific incident work-related injury.

In order to prove a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the claimant must establish by a preponderance of the evidence: an injury arising out of and in the course of employment; that the injury cause internal or external harm to the body which required medical services or resulted in disability or death; medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102 (16), establishing the injury; and that the injury was caused by a specific incident and identifiable by time and place of occurrence. Ark. Code Ann. § 11-9-102 (4)(A) (i).

The evidence reflects that the claimant was employed as a grill cook during her employment with respondent from August 18, 2006, to August 31, 2006. The claimant is right hand dominate. On August 31, 2006, while wearing rubber gloves, claimant moved a pair of tongs that was laying on the grill with left hand. The tongs were hot, causing the rubber glove to melt and burn the finger tips of the claimant's left hand. The injury was reported to appropriate supervisory personnel of respondent and an accident investigation report was completed along with an Workers' Compensation First Report of Injury. The latter document clearly reflects that the injury/burn was to the claimant's left. hand.

The claimant received medical treatment on September 1, 2006, at First Care-Stadium Clinic pursuant to the directions of respondent-employer. While the medical records relative to

the claimant's medical treatment received under the care of Dr. Terry Kosinski at the First Care-Stadium Clinic detailed the presence of evidence of burns to the fingers and thumb of the claimant's hand, they identify the affected extremity as the right hand rather than the left hand. Clamant is adamant that the burn was to her left hand. The documents completed by supervisory personnel of respondent in recording and reporting the injury identify the affected extremity as the claimant's left hand. Dr. Kosinski described "erythema to the distal pads of all four fingers and the thumb" which he assessed as first degree burns, and for which he prescribed Silvadene cream daily as well as pain medicine [Hydrocodone].

The medical further reflects that the claimant was directed to remain off work for three (3) days during two visits to Dr. Kosinski, September 1, 2006, and September 5, 2006. The medical reflects that when the clamant returned to Dr. Kosinskin on September 11, 2006, her chief complaint centered on an inability to grasp objects with her right hand. Dr. Kosinski recommended that the claimant remain off work following his September 11, 2006, examination of her until she was seen by an orthopedic physician.

The evidence preponderated that by the date of the claimant's September 11,2006, visit to Dr. Kosinski, her compensable burn injury to her left hand had resolved. The claimant's symptoms of numbness and pain were in her right hand. Subsequent diagnostic studies disclosed the presence of mild carpal tunnel syndrome in the claimant's right wrist.

While the evidence preponderates that the claimant sustained a compensable burn injury to the fingers and thumb of her left hand on August 31, 2006, it further reflects that she recovered from the injury and was release to return to work without restrictions as of September 7, 2006. The clamant has failed to sustain her burden of proof by a preponderance of the evidence that

medical treatment rendered to her subsequent to September 7, 2006, was reasonably necessary in connection with the compensable burn injury to her left hand of August 31, 2006. Further, the claimant has failed to sustain her burden of proof by a preponderance of the evidence that she remained in her healing period as a result of her scheduled burn injury to her left hand subsequent to September 7, 2006, and unable to work. The claimant's claim for temporary total disability benefits and medical benefits subsequent to September 7, 2006, is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**Andrew L. Blood, ADMINISTRATIVE LAW JUDGE**