

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F607250

JESSICA PARKER	CLAIMANT
WAL MART ASSOCIATES, INC.	RESPONDENT
CLAIMS MANAGEMENT, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED FEBRUARY 23, 2007

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

Claimant represented by JASON WATSON, Attorney, Fayetteville, Arkansas.

Respondents represented by TOD BASSETT, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held in this case on December 4, 2006, in Springdale, Arkansas. A pre-hearing order had been entered on October 3, 2006. Prior to the commencement of the hearing and by agreement of the parties, the disputed period of temporary total disability was changed to indicate a starting date of July 27, 2006, rather than June 27, 2006. A copy of this pre-hearing order with that amendment 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. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On June 22, 2006, the relationship of employee-self insured employer-TPA existed between the parties.

3. The appropriate weekly compensation rates are \$208.00 for total disability and \$156.00 for permanent partial disability.
4. 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 a compensable injury to her right hand on June 22, 2006.
2. The claimant's entitlement to medical services, temporary total disability from July 27, 2006 through a date yet to be determined, and attorney's fees.

In regard to these issues, the claimant contends:

- (a) The claimant contends that she sustained a compensable injury on or about June 26, 2006.
- (b) The respondents initially paid the first medical visit but denied the claimant's claim thereafter.
- (c) Although initially the respondents had light duty work available for the claimant, for some unknown reason, which we will attempt to clarify, upon controverting the claim the respondents had no additional light duty available to the claimant.
- (d) All additional benefits past the initial medical visit have been controverted in their entirety and the claimant's attorney is entitled to a full controverted attorney fee.

In regard to these issues, the respondent controverts the claim on compensability, and among other things, contends that there are no objective measurable findings substantiating the existence of any injury.

## DISCUSSION

### I. COMPENSABILITY

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The first issue to be addressed is whether the claimant sustained a “compensable injury” to her right wrist/hand, as the result of a specific incident on June 22, 2006. The burden rests upon the claimant to prove all of the facts necessary to establish this alleged “compensable injury”.

The first of these required facts are found in Ark. Code Ann. §11-9-102(4)(D). This subsection mandates that the actual existence of the physical injury or condition which is alleged to be compensable must be established by medical evidence. It further requires that the actual existence of this physical injury or condition must also be supported by “objective findings”, as that term is defined by Ark. Code Ann. §11-9-102(16)(A)(i).

The medical evidence presented in this case shows various diagnoses concerning the nature of the claimant’s right wrist/hand difficulties. Initially, the diagnosis of the claimant’s complaints was that of a contusion or crush injury to the claimant’s right wrist/hand. Although the initial records of Dr. David Dean fail to record any “objective findings” to substantiate this diagnosis, a subsequent examination by his nurse practitioner (Darlene Byrd), on July 5, 2006, noted a slight ecchymotic area or bruising of the

right wrist that coincided with the area where the claimant was “the most tender”.

All of the x-rays performed on the claimant failed to show any recent dislocation or fracture of the claimant’s right wrist/hand. In his report of July 20, 2006, Dr. Gary Neaville did state that x-rays, which were taken at that time, showed some sclerosis and possible acute fracture of the navicular bone in the right wrist. However, when these same x-rays were interpreted by Dr. Jon Shoppach, a radiologist, he found no evidence of any acute fracture or dislocation and stated the opinion that the x-rays were “unremarkable”.

The claimant was subsequently seen by Dr. Michael Griffey, an orthopaedic surgeon. On his physical examination, Dr. Griffey also noted mild swelling of the right hand, when compared to the left. Based upon the claimant’s complaints and his examination, Dr. Griffey recommended a nerve conduction study to investigate the possibility of a neurological component to the claimant’s complaints.

The electrodiagnostic studies that were recommended by Dr. Griffey were ultimately performed on October 18, 2006. These studies showed electrical abnormalities that were indicative of a mild right median neuropathy at the level of the claimant’s right wrist that were consistent with a right carpal tunnel syndrome. The claimant was further felt to exhibit clinical findings that would be indicative of DeQuervain’s tenosynovitis, involving the right hand. The claimant was ultimately seen by Dr. Bryan

Benafield, on November 20, 2006. Dr. Benafield is not only a board certified orthopaedic surgeon, but further specializes in the diagnosis and treatment of injuries and conditions involving the upper extremities, including the hand and wrist. It was Dr. Benafield's expert medical opinion or diagnosis that the claimant was experiencing DeQuervain's tenosynovitis of the right hand and right carpal tunnel syndrome. His opinion is clearly supported by various objective medical studies, as well as the claimant's subjective symptoms and complaints.

After consideration of the medical evidence presented, I find that the claimant has established by medical evidence, which is supported by "objective physical findings", the actual existence of an initial contusion or crush injury to the area of her right wrist and hand, which resulted in the development of DeQuervain's tenosynovitis of the right hand and right carpal tunnel syndrome. In regard to these various conditions, the claimant has satisfied the statutory requirements of Ark. Code Ann. §11-9-102(4)(D).

The claimant must next prove that these medically established and objectively documented physical injuries or conditions satisfy the definitional requirements for a "compensable injury" that are contained in Ark. Code Ann. §11-9-102(4)(A)(i). These definitional requirements are:

- (1) that the physical injury or condition must arise out of and occur in the course of the employment;
- (2) that the physical injury or condition must be caused by a specific incident;

- (3) that the physical injury or condition must be identifiable by time and place of occurrence;
- (4) that the physical injury or condition must cause internal or external physical harm to the claimant's body, and
- (5) that the physical injury or condition must require medical services or result in disability.

In order to satisfy the first three of these requirements, the claimant must prove by the greater weight of the credible evidence the existence of a causal relationship between the medically established and objectively documented physical injuries or conditions involving her right wrist/hand and a specific employment related incident. The only direct evidence presented by the claimant to prove such a relationship is her own testimony. Although the testimony of a party is never considered uncontradicted. This does not mean that it can be arbitrarily regarded. If such testimony is credible, it may be sufficient, in and of itself, to prove any fact it is legally competent to address.

Clearly, the claimant's testimony would be legally competent to prove the occurrence of a specific employment related incident and to prove the existence of a reasonably close temporal relationship between such an incident and the onset of her right wrist/hand difficulties. The claimant testified that on June 22, 2006, she was performing her assigned employment activities as an oil change technician. In order to drain the old oil from the vehicle, she had to move a metal grate that weighed approximately

40 pounds. While moving this metal grate, her right wrist and hand was caught between that grate and another. She stated she experienced some sudden and immediate pain and discomfort in her right wrist/hand area. She denied any problems with her right wrist/hand prior to this incident. She testified that she immediately reported the accident and injury to the morning supervisor and later reported the same to the afternoon supervisor, who put her on light duty. She stated that by the end of her shift, her difficulties with her right wrist/hand had worsened to the point where she could not use the tools required to change the oil. Some three to five days later, she requested the respondent to send her to a doctor and was sent to Dr. David Dean (a general practitioner) and the company physician. When the respondent subsequently denied her claim, the claimant consulted her family physician, Dr. Gary A. Neaville. In turn, Dr. Neaville referred the claimant to Dr. Michael Griffey, an orthopaedic surgeon, and Dr. Griffey referred her to Dr. Bryan Benafield, an orthopaedic surgeon specializing in the care and treatment of upper extremity injuries and conditions.

At the hearing, the claimant conceded that she had been involved in a motor scooter wreck, shortly before the incident of June 22, 2006. She stated that in this accident she had injured her shoulder but had sustained no injury or experienced any difficulty with her right arm below the shoulder. She stated that she was treated for her shoulder injury by Dr. Douglas Smiley, a chiropractor. The reports and records of Dr. Smiley confirm the

claimant's testimony, in regard to the nature and area of her injury and complaints following the scooter accident. There is no indication in any of these medical records or reports of an injury or any symptoms or complaints involving the claimant's right wrist/hand.

After viewing the claimant at the hearing, she appeared to be a credible witness, in regard to both the occurrence and mechanics of the employment related incident on June 22, 2006 and to the initial onset and progression of her right wrist/hand difficulties. Her testimony on these subjects coincides with the various histories recorded by all of her treating physicians and medical providers (with one arguable exception, Dr. Neaville describe the claimant's injury as occurring when her wrist was smashed between "boxes" at Wal Mart on June 27, 2006, rather than two grates at Wal Mart on June 22, 2006).

Clearly, the accident and type of trauma described by the claimant, as occurring on June 22, 2006, could logically cause all of the medically diagnosed and objectively documented injuries or conditions involving the claimant's right wrist/hand, i.e. a contusion of the soft tissue, DeQuervain's tenosynovitis, and right carpal tunnel syndrome. The greater weight of the evidence shows that the claimant's symptoms that are indicative of the occurrence of the various injuries or conditions which first appeared within a reasonable period of time following the described employment related trauma. As Dr. Benafield indicated, in his report of November 20, 2006, if the claimant's description of the employment

related incident and her history of the initial onset and progression of her difficulties was accurate, then it would be his expert opinion that her current conditions of DeQuervain's tenosynovitis and right carpal tunnel syndrome were related to her work injury. I find that the evidence presented shows that the claimant's history, as relied upon by Dr. Benafield, is accurate.

While it would be possible that the claimant's diagnosed conditions with her right wrist/hand could have resulted from her motor scooter accidents, this possibility is highly unlikely, due to the absence of a close temporal relationship between the motor scooter accident and the initial onset of symptoms indicative of the presence of these injuries or conditions. It is also possible that the claimant's carpal tunnel syndrome could in some way be causally related to her hobby of wire wrapping. However, again there is no evidence of any reasonably close temporal relationship between such activity and the initial onset of symptoms indicative of the presence of carpal tunnel syndrome. There is also no evidence that this activity actually involved rapid repetitive motion of the right wrist/hand. Clearly, there are unlimited possible causes, for the diagnosed injuries or conditions involving the claimant's right wrist/hand. However, the evidence presented shows that the specific employment related incident, on June 22, 2006, is the most likely or probable cause. The claimant need not show the required causal relationship to an absolute or mathematical certainty. It is sufficient that she prove by the greater weight of the credible evidence that the specific

employment related incident is the most likely or probable cause of her wrist/hand difficulties.

Therefore, I find that the claimant has proven by the greater weight of the credible evidence presented that her right wrist/hand difficulties, in the form of a contusion, DeQuervain's tenosynovitis, and right carpal tunnel syndrome, arose out of and occurred in the course of her employment with the respondent, were caused by a specific employment related incident, and are identifiable by time and place of occurrence. This satisfies the first three definitional requirements for a "compensable injury" that are contained in Ark. Code Ann. §11-9-102(4)(A)(i).

The claimant's subjective complaints of pain and numbness, together with the objective abnormalities noted on the electrodiagnostic studies are sufficient to prove that the claimant's employment related injury produced internal physical harm to the affected part of her body. This satisfies the fourth statutory requirement of Ark. Code Ann. §11-9-102(4)(A)(i).

The medical evidence presented is sufficient to prove that the claimant's employment related right wrist/hand injury required medical services. This medical evidence together with the claimant's credible testimony proves that the claimant's employment related right wrist/hand injury significantly limited her physical abilities and adversely affected her ability to perform gainful employment. These physical limitations clearly prevented the claimant from performing the employment position she held with the respondent at the time of her employment related injury. Thus, the

claimant has proven by the greater weight of the credible evidence that her employment related injury required medical services and resulted in disability (at least on a temporary basis). This satisfies the final requirement for a “compensable injury”, under Ark. Code Ann. §11-9-102(4)(A)(i).

In summary, I find that the claimant has proven all of the facts necessary for her right wrist/hand difficulties to constitute a “compensable injury”, under the Arkansas Workers’ Compensation Act.

## II. BENEFITS

The next matter to be addressed concerns the claimant’s entitlement to appropriate benefits for her compensable right wrist/hand injury. Again, the burden rests upon the claimant to prove her entitlement to the particular benefits she seeks.

Clearly, the claimant would be entitled to reasonably necessary medical services for her compensable injury, under Ark. Code Ann. §11-9-508. In order to represent “reasonably necessary medical services”, the medical services must be necessitated by or connected with the claimant’s compensable injury. Further, such medical services must have a reasonable expectation of accomplishing their intended purpose or goal, at the time the services were rendered. Such purposes or goals include the reasonably accurate diagnosis of the nature and extent of the compensable injury, medical services necessary to correct, improve, or stabilize the actual physical damage caused by the compensable injury, and medical services necessary to provide the claimant with

relief from the symptoms and limitations produced by the compensable injury.

The evidence presented shows that the medical services provided to the claimant for her right wrist/hand difficulties by and at the direction of Dr. David Dean, Dr. Gary Neaville, Dr. Michael Griffey, and Dr. Bryan Benafield were all necessitated by or connected with the claimant's compensable injury. The evidence presented also proves that the x-rays of the claimant's right wrist/hand taken by Dr. Douglas Smiley, and the additional medical services recommended by Dr. Bryan Benafield are also necessitated by or connected with the claimant's compensable right wrist/hand injury.

The services provided by these individuals were also of a type and nature commonly accepted and employed by the general medical community for the evaluation and treatment of claimant's wrist and hand injuries of the type experienced by the claimant. As these services were medically appropriate, they must have had a reasonable expectation of accomplishing the purpose or goal for which they were intended. In fact, the evidence shows that at least the diagnostic services provided were actually successful in accomplishing their intended purpose (i.e. a reasonably accurate diagnosis of the nature and extent of the claimant's compensable injury).

I find that the medical services provided to the claimant for her right wrist/hand difficulties by and at the direction of Dr. David Dean, Dr. Douglas Smiley, Dr. Gary Neaville, Dr. Michael

Griffey, and Dr. Bryan Benafield all represent reasonably necessary medical services, under Ark. Code Ann. §11-9-508. I further find that the medical services recommended to the claimant by Dr. Benafield for her right wrist/hand difficulties also represent reasonably necessary medical services for the claimant's compensable injury, under Ark. Code Ann. §11-9-508. Pursuant to the provisions of this subsection, the respondent is liable for the expense of these services, subject to the medical fee schedule established by this Commission.

The final benefit to be addressed is the claimant's entitlement to temporary total disability benefits from July 27, 2006 through a date yet to be determined. The compensable injury involved in the present claim is to a portion of the claimant's body that is scheduled under Ark. Code Ann. §11-9-521. Pursuant to the provisions of this section of the Act, the claimant would be entitled to temporary total disability benefits until the end of her healing period or until she returns to work, whichever occurs first.

The duration of the healing period is a medical question, which must be resolved on the basis of the greater weight of the medical evidence presented. The healing period from the effects of a compensable injury continues until the claimant has achieved the maximum benefit of time and medical treatment in regard to the resolution or improvement of the actual physical damage caused by the compensable injury. Once this underlying physical damage resolves or at least stabilizes, at a level where nothing further

in the way of medical treatment offers a reasonable expectation of improvement, then the healing period has ended.

In the present case, the medical evidence shows that the claimant has continued within her healing period from the effects of her compensable right wrist/hand injury from June 22, 2006 through a date yet to be determined. The medical record shows that the claimant was under continuous active medical treatment from the time of her injury through November 20, 2006. In the last medical report tendered (the November 20, 2006 report of Dr. Benafield), even further medical services were deemed necessary and appropriate. Dr. Benafield is a highly competent orthopaedic surgeon with particular expertise in the area of treatment of hand and wrist difficulties. His expert medical opinion concerning the need for additional medical services is entitled to substantial weight and credit. In the present instance, this expert opinion is sufficient to support the conclusion that the claimant's healing period will continue until the recommended medical services are received.

I recognize that the claimant's healing period from the effects of her compensable right wrist/hand injury may have been extended by the fact that she has not received the appropriate medical care in an expeditious manner. However, her failure to receive this treatment is in no way the fault of the claimant. Rather, this delay is due to the respondent's refusal to accept liability for and authorize such medical services. Therefore, the

respondent cannot complain that the healing period has been unnecessarily extended.

The evidence further shows that the claimant continued to work, at light duty, after her compensable injury. However, the respondent refused to continue to provide the claimant with such light duty employment on or about July 25, 2006. At that point, the respondent insisted that the claimant obtain a full medical release and return to her prior employment position or no further employment would be provided her. The claimant's lack of continued employment with the respondent, after July 26, 2006, was in no way due to the claimant's misconduct in connection with the respondent or unjustified refusal of suitable employment.

Under the circumstances of this case, I find that the claimant has proven by the greater weight of the credible evidence that she had returned to employment, as a result of the effects of her compensable injury, during the period beginning July 27, 2006, and continuing through a date yet to be determined.

In summary, I find that the claimant is entitled to temporary total disability benefits at the appropriate weekly rate for the period beginning July 27, 2006 and continuing through a date yet to be determined. [I would note that the respondent can relieve itself of continuing liability for temporary total disability benefits by returning the claimant to suitable light duty employment.]

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. On June 22, 2006, the relationship of employee-self insured employer-third party administrator existed between the parties.

3. On June 22, 2006, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$208.00 for total disability and \$156.00 for permanent partial disability.

4. On June 22, 2006, the claimant sustained a compensable injury to her right wrist/hand, in the form of a contusion, DeQuervain's syndrome, and carpal tunnel syndrome. Specifically, the claimant has proven that these particular injuries or conditions are established by medical evidence, which is supported by objective findings, arose out of and occurred in the course of her employment with the respondent, were caused by a specific incident, are identifiable by time and place of occurrence, caused internal physical harm to her body, required medical services, and resulted in disability.

5. The claimant was rendered temporarily totally disabled, as a result of the effects of her compensable right wrist/hand injury for the period beginning July 27, 2006, and continuing until a date yet to be determined. Specifically, the claimant has proven that during this period she has continued within her healing period from the effects of her compensable injury and had not returned to work.

6. The medical services were provided to the claimant for her right wrist/hand difficulties by and at the direction of Dr. David Dean, Dr. Douglas Smiley, Dr. Gary Neaville, Dr. Michael Griffey, and Dr. Bryan Benafield. The claimant has also proven that the additional medical services recommended by Dr. Benafield, in his

report of November 20, 2006, also represent reasonably necessary medical services for her compensable injury. Specifically, the claimant has proven by the greater weight of the credible evidence that these medical services were necessitated by or connected with her compensable right wrist/hand injury and have a reasonable expectation of accomplishing the purpose or goal for which they are intended.

7. The respondent has denied the occurrence of any compensable injury to the claimant's right wrist/hand and has controverted this claim in its entirety.

8. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on the controverted temporary total disability benefits herein awarded.

#### ORDER

The respondent shall pay to the claimant temporary total disability benefits for the period beginning July 27, 2006, and continuing until a date yet to be determined.

The respondent shall be liable for the expense of medical services provided the claimant for her right wrist/hand difficulties by and at the direction of Dr. David Dean, Dr. Douglas Smiley, Dr. Gary Neaville, Dr. Michael Griffey, and Dr. Bryan Benafield. The respondent shall also be liable for the expense of the medical services recommended by Dr. Benafield in his report of November 20, 2006. Such liability is subject to the medical fee schedule established by this Commission.

The respondent shall pay to the claimant's attorney the maximum statutory attorney's fee on the controverted temporary total disability benefits herein awarded. One-half of this fee is the obligation of the respondent in addition to such benefits. The remaining one-half of this attorney's fee is to be withheld by the respondent from such benefits.

All benefits herein awarded, which have heretofore accrued are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
ADMINISTRATIVE LAW JUDGE