

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F610742

ROBERT SALLY, EMPLOYEE

CLAIMANT

REDGIE JOHNSON ENTERPRISE, INC., EMPLOYER

RESPONDENT

COMMERCE & INDUSTRY INS. CO., CARRIER

RESPONDENT

OPINION FILE MAY 24, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on March 2, 2007, at Jonesboro, Craighead County, Arkansas.

Claimant represented by the HONORABLE JOHN BARTTELT, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE MELISSA WOOD, 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' compensation benefits. On December 12, 2006, 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, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the afore. Further, the parties stipulated to an average weekly wage of \$279.00. The Pre-hearing Order is herein designated a part of the record as Commission Exhibit #1.

The testimony of Robert Sally, the claimant, and Shari Finchem, coupled with medical

reports and other documents comprise the record in this claim.

DISCUSSION

Robert Renae Sally, the claimant, with a date of birth of August 19, 1962, commenced his employment with respondent in June 2005. The claimant is right-hand dominate. For twenty (20) years prior to his employment by respondent the claimant's work history consisted of janitorial work. Claimant work for several years at a Newport bank before being laid off. Thereafter claimant was employed by Dow Janitorial for a short period of time before securing employment with respondents.

Claimant describes his health as "great" prior to his employment with respondent. Claimant denies recently being treated by a physician prior to his employment with respondent. Further, claimant denies ever being treated by a physician relative to his wrists, hands, arms or elbow prior to his employment by respondent. Claimant asserts that he underwent a pre-employment physical and drug test as a part of the employment application process with respondent.

Regarding the employment duties he discharged in his employment with respondent, the testimony of the claimant reflects that he did floors. Claimant worked at Jonesboro High School. Claimant acknowledged that his job duties during the summer were different than those performed during the regular 9-month school session. As previously noted the claimant was hired by respondent in June 2005, the beginning of the summer.

The testimony of the claimant reflects that when school started in August 2005, his job duties also changed. Claimant commenced his shift at 3:00 p.m. and worked eight (8) hours. Claimant testified that from August 2005, through the conclusion of the school year his job

duties consisted of cleaning classrooms at Jonesboro High School. Claimant described his regular job duties/tasks as emptying trash, dust-mopping floors, wiping down the desks, and doing chalkboards. Claimant maintains that he remained in good health from August 2005, through December 2005. Claimant continued performing the same job tasks in his employment with respondent during the spring semester of 2006 without complaints or physical problems. School was out in May 2006.

The testimony of the claimant reflects that during the summer his job duties changed and included the tasks of stripping the floors and use of a side-by-side scrubber. Claimant also worked at other schools, West school and at Anni Camp. Claimant testified that during the summer of 2006, he worked on the floors of the entire school, to include the gymnasiums, the cafeterias, hallways, as well as the class rooms. In stripping the floors, the testimony of the claimant reflects that the chemical was applied to the floors with a mop; after allowing the chemicals to remain on the floor for a period, the side-by-side scrubber was used to remove the solution and wax from the floor. Claimant described the side-by-side scrubber as a machine with a handle of the height similar to a lawn mower. Claimant explained that the machine was round at the base, under which a pad was placed and used to scrub the wax from the floor. Claimant provided a description of the machine and the process of stripping the floors. (T. 18-22).

Claimant's testimony reflects that he operated the scrubber continuously for 25 minutes at a time before taking a break or performing another task. During the periods of operation of the scrubber claimant held down the levers on the handle which engaged the machine. Tasks that the claimant performed between the 25-minute period of stripping included using a wet/dry vac to dry the water/liquid up. Claimant used both hands in operating the wet/dry vac for

approximately 15 minutes at a time. (T. 23). Claimant addressed one half of the room at a time, before moving to another room and repeating the process. Claimant worked on four to five class rooms per night.

The testimony of the claimant reflects that he first started noticing problems with his hands in June 2006:

It started in June and I noticed it about - it started with my left wrist started to just getting sore. It felt like it was sprain, and it started getting worse then. (T. 16).

Claimant testified that the symptom of pain was in the middle of his left wrist which caused him to have difficulty bending it. Claimant observed that the pain started out fairly minor at first, however over the next two or three months it progressively worsened as he continued to work. Claimant's testimony reflects that the symptoms progressed to the point that it was difficult to bend his hand/wrist or to put a lot of pressure on it.

Although the claimant testified that his symptoms were worse in July 2006, than they were in June 2006, he did not tell his supervisor about it. Claimant asserts that he first told his supervisor about his symptoms/problems on August 31, 2006. The testimony of the claimant reflects that on August 31, 2006, he left work and went to the emergency room for medical treatment relative to his left wrist. Claimant acknowledged that he did not tell his supervisor that he was going to the emergency room, although when he left work at 11:30 p.m. he had already made up his mind that he was going to seek medical treatment at the emergency room.

Claimant's testimony reflects that he relayed a history of his complaint to the attending emergency medical personnel at the emergency room, and that after being examined and undergoing some tests, he was treated with prescription medication. The testimony of the

claimant reflects that he described his job duties to the attending emergency physician as well as the types of machines he operated in the discharge of his employment duties. Claimant asserts that the attending emergency room physician diagnosed his condition as carpal tunnel syndrome.

Claimant did not report back for work following the emergency room visit. Claimant explained that he was furnished an off-work slip by the attending emergency room physician directing him to remain off work for couple of days. The testimony of the claimant reflects that he called his supervisor, Shari Finchem, that morning and relayed that he had been to the emergency room, directed to remain off work and furnished an off-work excuse; and that further test, a EMG, had been recommended. The date of the afore telephone call by the claimant to his supervisor was September 1, 2006. Claimant testified that the first time he relayed to his supervisor that he had carpal tunnel syndrome was during the September 1, 2006, telephone conversation.

The claimant testified that he was off work on Friday, September 1, 2006, and that Monday, September 4, 2006, was a holiday. Claimant testified that he did return to work on Tuesday, September 5, 2006, and continued to work for several days thereafter. Claimant later underwent the EMG/NCV test. Claimant testified that learned of the test results when he went to the hospital to pick up his medical records. The testimony of the claimant reflects that hospital personnel in the emergency room assisted him in interpreting the test results.

The testimony of the claimant reflects that he did not take the test results to anyone at respondent-employer. The claimant testified that as his hands continued to worsen he finally sought medical treatment under the care of Dr. Hurst, a primary care physician. The testimony of the claimant reflects that he did not have a family doctor, had not seen a physician for a

number of years, and that Dr. Hurst had been recommended by his cousin who is employed at St. Bernards Medical Center.

Claimant went to Dr. Hurst's office on September 20, 2006. Claimant asserts that before he was seen by Dr. Hurst he had spoken with his supervisor, Shari Finchem:

Told her that I as going to the doctor, and she had told me to let her know what day the appointment would be. (T. 34).

Claimant acknowledged that he did not tell Ms. Finchem why he was going to the doctor during his conversation with her. The claimant explained that he was not seen by Dr. Hurst on September 20, 2006, because after completing paperwork and returning it to the receptionist he was advised that his complaint might be a workers' compensation matter. Claimant acknowledged that until his conversation with the receptionist at Dr. Hurst's office on September 20, 2006, he had not informed anyone with respondent-employer that he thought that his complaint was a workers' compensation injury or claim.

The testimony of the claimant reflects that he indicated on the form that he completed at Dr. Hurst's office that his injury was work related. After providing the completed form to the receptionist, a telephone call was placed by the receptionist to the general manager of respondent-employer, Steve Devere. Following the telephone call, the claimant left Dr. Hurst's office and returned home. Upon arriving home, claimant made a telephone call to Mr. Devere. Regarding the telephone conversation with Mr. Devere, claimant testified:

I told him that I had filed a workman's comp claim case and I needed payment arrangements and that when he - to call him - and he denied it. (T. 38).

Claimant maintains that Mr. Devere informed him that he would not authorize medical treatment

at that time. Claimant asserts that he informed Mr. Devere that the requested treatment was for carpal tunnel syndrome.

The testimony of the claimant reflects that following his conversation with Mr. Devere, he next called his supervisor, Ms. Finchem, who later came to his residence with workers' compensation claim forms to be completed. Claimant maintains that after the paperwork was completed by Ms. Finchem he was provided a copy and she left. Claimant denies having any further conversation with either Ms. Finchem or Mr. Devere on September 20, 2006.

Claimant's testimony reflects that he returned to work the following day and continued to work for a few days thereafter. Claimant later received a letter from the workers' compensation insurance carrier in early October 2006, denying the compensability of his claim. The testimony of the claimant reflects that he return to work following receipt of the October 2006, letter from the carrier. Claimant denies having a conversation with supervisory personnel following receipt of the October 2006, letter.

Claimant asserts that he continued to work for a couple of weeks after receiving the October 2006, letter from the carrier, finally quitting when the pain became too severe. Claimant testified that he called an talked with his supervisor, Ms. Finchem, about his injury and his inability to continue working due to the severe pain. (T. 42). Claimant maintains that Ms. Finchem told him to call her the next day to see if they needed him to work. The afore occurred on or about October 11, 2006.

Claimant testified that he has been unable to work since October 10, 2006. The testimony of the claimant reflects that the condition of his hands is getting worse. Specifically, the claimant testified that his left hand has deteriorated to the point that "locked" with the fingers

in a curled position. Claimant added that he is unable to extend the finger on his left hand to a straighten position. While he can make a fist with his left hand claimant noted to do so is painful. (T. 43-44). The credible testimony of the claimant reflects that his condition, relative to his hand, is worse now than it was in October 2006, when he last worked. Claimant wore braces, which were provided during his August 31, 2006, emergency room visit, on his wrists/hands at the time of the hearing. Claimant asserts that he wears the braces every day, to include at night. The testimony of the claimant reflects that he wore the braces at work every day after August 31, 2006.

The testimony of the claimant reflects that he has not received any medical treatment relative to his hand/wrist complaints since September 2006. Claimant explained that he does not have health insurance nor does he have money to go to the doctor.

During cross-examination the claimant testified regarding the procedure for filing a workers' compensation claim in the employment of respondent-employer, which included reporting it to a supervisor. Regarding his routine in performing his job duties during the summer months, claimant's testimony reflects that only the floor in one-half a classroom was done at a time; that after the stripping liquid was put on the floor it would stand for five minutes before the scrubber was engaged for a period of 25 minutes continuously; and that only four or five classrooms were done per night.

Claimant concedes that at first he thought he had a wrist strain with the onset of his symptoms, however he did not complain to anyone. Further, the claimant acknowledged that he did not tell the doctor at the emergency room that he thought his complaints were related to his work activities. Claimant also acknowledged that when he had the telephone conversation with

his supervisor, Ms. Finchem, on September 1, 2006, he did not tell her that his complaint and emergency room visit was related to his work activities, only that it was carpal tunnel syndrome. Claimant testified that when Ms. Finchem arrived at his residence to complete the workers' compensation paperwork on September 20, 2006, following his visit to Dr. Hurst's office, he did not tell her what he thought was the cause of his problems. Claimant concedes that he did mention throwing the trash out to Ms. Finchem. Claimant's testimony reflects, regarding the afore:

Yeah. No, I didn't think it was throwing out trash, I just told her my wrist was sore. I didn't know what really caused it.

I know I told her about - that I'd thrown out trash. (T. 48-49).

Claimant denies having symptoms in his wrist in March 2005.

Shari Dawn Finchem has been employed by respondent-employer for seven and one-half years, during which she has worked as a supervisor for approximately six of the afore years. In describing her job duties as a supervisor, Ms. Finchem testified:

There's a lot doing nothing. Mor or less, just, you know, checking on employees, training them, checking accounts daily, making sure they have supplies and things they need, that they have equipment, and the accounts are cleaned to the client's satisfaction. Just, you know, just a verity of different things. (T. 53).

Ms. Finchem estimated that on an average respondent employs from 20 to 30 employees at a time.

The testimony of Ms. Finchem reflects that she met with the claimant when he started working for respondent in June 2006. Regarding the claimant's employment position, Ms. Finchem's testimony reflects:

He was housekeeper/floor tech. He started in the summer when schools were out, so he worked on the floor crew most of the time and if he wasn't working on the floor crew, he was moved to the cleaning crew.(T. 53).

Ms. Finchem provided testimony regarding the claimant's job duties during the summer of 2006:

Okay. He was on the floor crew at that time, and they started out in one school. He was - anywhere from two to four people to a crew. They would, you know, move furniture to make it where they had half of classrooms to do. At times he ran the roto, he also ran the E-vac, he did the wet-mopping, he'd lay the stripper. They worked together as a team, cause there's usually two or three, at first - there was two to three people each day on that. They would come in, shift the furniture to the other side of the room, you know, that they had don the night before, and then they'd get their equipment out and lay the stripper, run the roto, you know, E-vac, wet-mop, mop the chemicals back off the floor that the E-vac leaves, so he was - he did all those chores, but not all by himself. One person - a lot of times his co-worker had more experience on the roto and he would start on the roto, Robert would be the E-vacer or wet-mopper. When the floors were dry to where he could wax, the co-worker would go do the waxing and then Robert would step up to the roto, and then his other co - the two of them would work, and then when the other co-worker was done with the waxing, then he could do it till it dried - he'd jump back in and work with the other two. (T. 53-54).

Ms. Finchem noted that most of the time the claimant worked with Terry Haskins.

Ms. Finchem's testimony reflects that the claimant went through orientation at the time he was initially hired and again when he was moved into doing the job tasks with the roto and E-vac. As a part of the orientation, the testimony of Ms. Finchem reflects that the procedure for filling out and filing workers' compensation claims was discussed with the claimant. (T. 55-56).

Ms. Finchem's testimony reflects since she has been a supervisor she has completed several incident reports and one workers' compensation form relative to employees under her supervision. Ms. Finchem maintains that respondent-employer adheres to the recommendations of an employee's physician with respect to restricted/light duty. (T. 56-57).

With respect to her actions upon the specific reporting of an injury by an employee under her

supervision, the testimony of Ms. Finchem reflects:

If I'm notified that they feel that they need to go see a doctor or go to the ER, the pain's intense and they want to go right now, I take them myself to the hospital, I fill out the other forms there, I wait there, and I talk to the doctor and explain what their job duties are and what they are doing, and then at that time the doctor will tell us what they can and cannot do. (T. 57).

Ms. Finchem's testimony regarding when she first became aware that the claimant was experiencing difficulty with his wrist reflects:

It was in August, just before school started, that I noticed that he had a wristband on his wrist. I don't remember, offhand, which one it was, and I asked him what happened and he just said it hurt and he thought he had sprained it, you know, it's not uncommon to sprain something, so I really didn't think much of it, you know, I mean, make that being work-related or anything, just by his response. (T. 58-59).

Ms. Finchem testified that she asked the claimant what happened and claimant responded that he didn't really know. Ms. Finchem testified that she did not become aware that the claimant was making a workers' compensation claim until the day that she was directed by her supervisor to go to the claimant's apartment to complete workers' compensation paperwork on September 20, 2006.

Ms. Finchem's testimony regarding her discussion with the claimant on September 20, 2006, when she completed the workers' compensation paperwork reflects:

We filled out the paperwork and the section where I had to record what he did, I asked him, and he said that he first noticed it when he was throwing up a bag of trash. He had like a tinge in his wrist and he thought - I asked him why he didn't tell me then - why, I just figured I'd sprained it, you know, is what he said. (T. 59).

During the September 20, 2006, meeting the Form N and an Accident Investigation Form were completed. The claimant's chief complaint was reflected as pain in both wrists. Ms. Finchem

testified that the claimant indicated that he did not know what caused his pain/injury, and as a consequence she indicated “unknown” on the applicable space on the document.

Ms. Finchem acknowledged that she was aware at some point prior to September 20, 2006, that the claimant had undergone an EMG/NCV test at the hospital. Further, Ms. Finchem testified that while she was not aware of the test results, the claimant informed her that he thought that his complaint was carpal tunnel syndrome. Additionally, Ms. Finchem concedes that at the time she went to the claimant’s residence on September 20, 2006, he was contending that his carpal tunnel syndrome was work-related. Claimant informed Ms. Finchem that he was having quite a bit of pain at the time of the September 20, 2006, meeting. Finally, Ms. Finchem acknowledged that when she last talked with the claimant on the telephone he informed her that he was having pain in his wrist and that he was unable to work that day.

The testimony of Ms. Finchem reflects that she prepared her handwritten statement/summary of her recollections regarding the claimant’s wrist complaint around the time that she completed the workers’ compensation paperwork. Ms. Finchem testified regarding her observation of the claimant at work:

Sometime in August there’s - he had a - I don’t remember the exact date - he had a wrist brace on. He did say something about a sprained wrist. I believe it was a few days after that. I checked frequently with Robert on his wrist, throughout - I remember at one time, he mentioned something - called me about carpal tunnel, as to an exact date, no.

No, it was in August. It was before he went to the ER, and it was before he had the test done. Actually, I believe it was the day that he came out to help me carry some trash boxes in, and I asked him something about his wrist, and I believe he said something about carpal tunnel. I can’t give you the exact date. I didn’t really think too much of it when he said carpal tunnel. People do have problems with that, occasionally, and

he seemed to be familiar with it. (T. 63).

Regarding her various conversations with the claimant about his wrists, Ms. Finchem testified:

Well, I would come in to work to see what they needed and see, you know, what - maybe pass on messages or events that was coming up that week, and I'd see him with a brace, or I'm asking him how it was today, and he'd make comments, well, it's not as bad as yesterday, or, you know, things like that. I remember that time he did mention carpal tunnel, you know, it didn't seem - he didn't appear to be surprised when he said carpal tunnel, so I - my way of thinking and I did not go any further with him, was well, people do have flare-ups of that occasionally in their lives, you know, so I just figured it was something he was familiar with and had problems with in the past, so I did not dig any further into it. (T. 64).

Ms. Finchem's recollection of any time the claimant complained of his wrist pain in connection with his job duties reflects:

Only when he called in - just when he'd call in to work - he'd say the pain was, you know, really hurting bad and he just couldn't work that day. That would be the only time. When he was at work and everything, he always did his do, and he never called me and complained or asked to, you know, to be changed or someone to help him or anything - he never did. And when he came to work, he did his work, and he never complained about it. He never complained about pain in his wrist. (T. 65).

Ms. Finchem testified that there were occasions when she discussed/counseled the claimant regarding his job performance:

Of '05? There have been some times that I had to take Robert and have some talks with him and he - you know, about different incidents, and you know, admonish him of, you know, our policies and procedures. He's been - you know, he really doesn't open up on this stuff, but he's just - he'd either say no, not me, or okay, I understand, you know, there won't be no further problem, and he's very, mostly polite and professional about it. (T. 65-66).

Ms. Finchem estimated that during the summer, over the course of an 8-hour shift, the claimant worked the scrubber 3 to 4 hours. Ms. Finchem added, regarding the various job tasks

of the claimant:

Right. The roto is operated by him, but it's not a tight, hand-on, squeeze motion. You can really relax your hands. The machine vibrates, and your hands are there to control it. You don't grip onto it and, you know, real hard. You don't have to do that. I can run the roto, and it's a big machine. You're basically there to guide it and the big thing with the roto is, is when it goes to the left, you use the right hand to guide it back is all. You're basically just holding the machine and guiding it. It runs itself. It rotates itself to strip the floor. You don't ever grab a hold of a roto and try to clamp down, because it will get away from you if you, you know - you're just there to just hold onto it and guide it and it moves itself. (T. 67).

The testimony of Ms. Finchem reflects that in August 2006, the claimant had a black brace on his left wrist. Afterwards Ms. Finchem testified that she noticed that the claimant had beige braces on both wrists which he relayed had been provided and directed to wear by the doctor at the emergency room. The claimant was seen at the emergency room of St. Bernards Medical Center on August 31, 2006.

Ms. Finchem's testimony reflects that the respondent-employer utilizes FirstCare as a medical provider for injured employees if the facility is open at the time of the injury. If the injury and need for medical treatment is after office hours then the emergency room is used.

The testimony of Ms. Finchem reflects that the claimant last worked on October 10, 2006. Further, Ms. Finchem testified that the claimant's employment was terminated due to his failure to report for work for three days.

On rebuttal, claimant denied that he told Ms. Finchem that he had carpal tunnel prior to his August 31, 2006, emergency room visit. Claimant maintains that until he was seen by the physician at the emergency room on August 31, 2006, he had never heard of carpal tunnel and knew nothing about it. Claimant acknowledged that he did have a black wrist band, which he

purchased at Walgreens because he thought he had sprained his wrist.

The medical in the record reflects that the claimant was seen at the emergency room of St. Bernard's Regional Medical Center on August 31, 2006, at 11:41 p.m. with complaints of bilateral wrist pain causing some numbness into the fingers. The history provided by the claimant to emergency medical personnel reflects that left wrist pain was worse than the right; that he had been experiencing the complaints for two (2) weeks; that he does janitorial work; that there was no specific incident/injury; and that while the pain had been intermittent it was now constant. (CX. #1, p. 4). The symptoms were worse with motion. Records generated during the August 31, 2006, emergency room reflect that the claimant's complaint was diagnosed as carpal tunnel syndrome, ulnar tunnel syndrome, and neuropathy in the arm. Further, the claimant was provided bilateral wrist splints and Prednisone. Claimant was provided prescriptions for Prednisone and Relafen. The records also reflect that the claimant did not have a primary care physician, and that financial assistance paperwork was requested. (CX. #1, p. 1-4). The discharge instructions provided to the claimant following his emergency room visit directed that he remain off work until September 2, 2006, and that he would also need to be off for work for testing. (CX. #1, p. 6).

On September 7, 2006, claimant returned St. Bernards Regional Medical Center for the diagnostic studies that had been previously recommended at the time of the August 31, 2006, emergency room visit. The September 7, 2006, NCV studies reflects:

HISTORY: This is a 44-year-old man who complains of pain, numbness, and tingling involving both upper extremities.

DESCRIPTION OF TESTS: Nerve conduction studies of both upper extremities were performed. The median and ulnar nerves were studied.

IMPRESSION: Abnormal studies.

CONCLUSIONS:

1. The nerve conduction studies revealed slowing of the sensory nerve action potential velocities bilaterally. This findings is suggestive of the presence of a neuropathy.
2. The nerve conduction studies failed to reveal any definite evidence of Median nerve entrapment based on transpalmar latency findings. Repeat studies at a later date may be of benefit if the patient's symptoms persist. (CX. #1, p. 10).

On September 20, 2006, the claimant presented at the First Care Clinic, for treatment relative to his bilateral upper extremity complaints. After noting that the complaint was a product of work-related activities, the respondents were contacted to obtain authorization for treatment, however declined to furnish same. As a consequence of the afore, the claimant did not receive any medical treatment. (CX. #1, p. 12-17) Claimant has not received medical treatment, save for the September 7, 2006, diagnostic studies, since the August 31, 2006, emergency room visit.

On September 20, 2006, after the aborted attempt to obtain medical treatment at the First Care Cline, and respondents' refusal to authorize same, the claimant's supervisor proceeded to the claimant's residence and completed the Form N, and an accident investigation report. The Form N was completed by the supervisor and signed by the claimant. While the date of the accident is recorded as "App. August", neither the time of the accident nor the date and time that the employer was notified is recorded. (RX. #2, p. 21). The information recited in the area discussing the cause of the injury is not consistent with that contained in the emergency room records or in the summary complied by the supervisor. Specifically, the emergency room records record that the claimant performed janitorial work. In her summary, the claimant's supervisor

reported that the claimant told her that the emergency doctor informed him that his complaint was carpal tunnel. Nevertheless, the information as described on the Form N is written in such a manner as to attribute the claimant's complaint to a seemingly specific incident.

While the claimant was having complaints relative to his left wrist prior to the August 31, 2006, emergency room visit, such that he purchased and wore a apparatus on his left wrist, the credible testimony the claimant reflects that he was not aware that the symptoms were attributable to carpal tunnel syndrome. Further, the credible evidence reflects that until the August 31, 2006, emergency room visit the claimant had never heard of carpal tunnel, and as such was not in a position to attribute his left wrist complaints to same in mid-August 2006, contrary to the assertions of his supervisor.

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, 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 or about September 1, 2006, the relationship of employee-employer-carrier existed among the parties.
3. On or about September 1, 2006, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$204.00/\$154.00, for temporary total/permanent partial disability.
4. On or about September 1, 2006, the claimant sustained an injury in the form of bilateral carpal tunnel syndrome arising out of and in the course of his employment.

5. The claimant was temporarily totally disabled for the period October 11, 2006, and continuing through the end of his healing period, or until such time as he return to appropriate employment, a date to be determined.

6. The respondent had notice that the claimant was experiencing symptoms of a work-related injury as of mid-August 2006. The claimant did not become aware of the causal nexus of his injury to his employment duties until the August 31, 2006, emergency room visit, for emergency medical treatment. Though furnished with notice of reporting procedures, claimant did not claim his injury as a work-related injury for the purpose of workers' compensation benefits until September 20, 2006. The claimant failure to give notice of injury to respondent prior to September 20, 2006, is excused, pursuant to Ark. Code Ann. §11-9-701 (b)(1).

7. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of on or about September 1, 2006.

8. The respondents have controverted this claim in its entirety.

CONCLUSIONS

The claimant commenced his employment with respondents on June 15, 2005, performing janitorial duties. Claimant successfully discharged his assigned job duties, and there is no evidence to reflect he sought or obtained medical treatment prior to August 31,2005. Claimant asserts that he sustained an injury, in the form of bilateral carpal tunnel syndrome, within the course and scope of his employment which requires medical treatment and has rendered him totally incapacitated from engaging in gainful employment while within his healing period. Respondents contend that the claimant did not sustain a compensable injury while within

their employment. Further, respondents assert that if a compensable injury was sustained, notice was not provided to them until September 19, 2006, as such they would not be liable for any accrued workers' compensation benefits prior thereto.

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. In order for the claimant to maintain for compensation, he is required to prove by a preponderance of the evidence that: the injury arose out of and in the course of his employment; the injury caused internal or external physical harm to the body that required medical services or resulted in disability; the injury was a major cause of the disability or need for treatment. It is unnecessary to prove rapid repetitive motion when there is a diagnosis of CTS. *Kildow v. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W.2d 190 (1998).

In the instant claim, as noted above, there is no evidence that the claimant experienced any physical limitations or restrictions relative to his upper extremities prior to his June 15, 2005, employment by respondents. Claimant successfully assigned job duties throughout the summer of 2005, and the regular school year 2005-2006, where he was assigned to duties at Jonesboro Highschool. During the summer of 2006, the claimant's job duties and work location changed. The claimant worked on the floor crew maintaining the floors at two facilities. There is not a dispute regarding the mechanics of the claimant's job duties during an 8-hour shift. As substantial of the time entailed stripping floors, which included operating a scrubber and a wet/dry vac.

While the claimant had over twenty years of janitorial experience prior to his employment

with respondents, there are no medical reports in the record evidencing that the claimant had received treatment relative to upper extremity (wrist) soreness, numbness, tingling, or swelling prior to August 2006. The credible evidence reflects that the claimant was unaware of the ailment “carpal tunnel syndrome” prior to his August 31, 2006, visit to the emergency room of St. Bernards Regional Medical Center.

Prior to the August 31, 2006, emergency room visit the claimant had experienced symptoms in his upper extremities, the left worse than the right. Indeed, claimant assumed the complaint to be a sprain and purchased a device for his wrist at Walgreens. In mid-August 2006, the claimant’s supervisor observed the claimant wearing the device and inquired about it. After being told by the claimant that he thought he may have sprained his wrist no further inquiry was had. Claimant continued to discharge his assigned job duties.

As reflected in the medical history at the time of the August 31, 2006, emergency visit, the claimant has experience intermittent pain which had become constant, thereby resulting in the ER visit. The claimant received medical treatment during the August 31/September 1, 2006, emergency room visit, as well as a diagnosis of his complaint. The claimant was also directed to remain off work the following day as well as the date of the diagnostic test. Claimant was provided medication and prescriptions for additional medication. It was during the emergency room visit that the claimant first learned that he had carpal tunnel syndrome.

The claimant notified his supervisor of the emergency room visit and the diagnosis as rendered by the attending emergency room physician. Respondent took no action toward either completing an accident report, filing a workers’ compensation claim, or investigating the matter. The claimant continued to discharge his assigned job duties while wearing the bilateral wrist

splints that were provided during the emergency room visit. On September 7, 2006, the claimant underwent the NCV studies which confirmed, objectively the internal physical harm and the resulting disability. Respondents were aware of the results of the NCV studies prior to September 20, 2006.

It was only after the claimant presented for medical treatment at the First Care Clinic, and discussed his job duties and the diagnosis from the NCV study that he learned that he could file a claim for workers' compensation benefits. The respondents declined to provide authorization for medical treatment on September 20, 2006. The claimant's supervisor, pursuant to her supervisor, completed the Form N and an accident investigation report on September 20, 2006.

While the claimant was furnished with information regarding the procedure for filing workers' compensation claims during orientation at the time of his employment, the evidence preponderates that at the time of the onset of his symptoms claimant did not appreciate the nexus of the symptoms to his work-related activities. Respondents, through the supervisor of the claimant, were aware of the claimant's symptoms in mid-August 2006. Further, following the August 31/September 1, 2006, emergency room visit, claimant informed the respondent of his diagnosis and pending diagnostic studies.

The claimant has sustained his burden of proof by a preponderance of the evidence that he sustained an injury in the form of bilateral carpal tunnel syndrome arising out of and in the course of his employment with respondents which required medical treatment, is supported by objective finding and is the major cause of his disability and need for treatment. Respondents have controverted this claim in its entirety.

The evidence further reflect that respondents were aware of the claimant's compensable

injury prior to August 31, 2006, and took no actions to secure medical treatment relative to same on behalf of the claimant. The medical treatment had by the claimant on August 31/September 1, 2006, was of an emergency nature. Respondents refused to authorize medical treatment on September 20, 2006, and controverted the claimant's entitlement to any workers' compensation benefits relative to the compensable injury. The medical treatment rendered to the claimant prior to September 20, 2006, in the form of the emergency room visit and September 7, 2006, diagnostic studies, was reasonably necessary and related to the claimant's compensable injury.

The claimant continued to discharge his regular job duties through October 10, 2006, at which time he was rendered totally incapacitated from engaging in gainful employment as a result of the compensable bilateral carpal tunnel syndrome. The claimant suffered compensable a scheduled injury, remains within his healing period, and is unable to discharge employment duties. *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The claimant is entitled to the payment of temporary total disability benefits from October 11, 2006, until he reaches the end of his healing period or is returned to work. Respondents have controverted the afore benefits.

Ark. Code Ann. §11-9-508 (a) (Repl. 2002) mandates that the employer promptly provide for an injured employee such medical, surgical, hospital, nursing services and medicine as may be reasonably necessary in connection with the injury received by the employee. Further, subsection (b) of the afore provision states:

If the employer fails to provide the medical services set out in subsection (a) of this section within a reasonable time after knowledge of the injury, the Workers' Compensation Commission may direct that the injured employee obtain the medical service at the expense of the employer, and any emergency treatment afforded the injured employee

shall be at the expense of the employer. . . .

The evidence preponderates that the respondents were aware of the claimant's injury as early as mid-August 2006. Medical treatment rendered to the claimant relative to his compensable injury by the emergency room of St. Bernards Regional Medical Center on August 31/September 1, 2006, as well as diagnostic studies of September 7, 2006, was reasonably necessary in connection with claimant's compensable injury and the cost of same is the responsible of respondents.

Respondents have controverted this claim in its entirety.

AWARD

Respondents are herein ordered and directed to pay to the claimant temporary total disability benefits at the weekly compensation benefit rate of \$204.00, for the period beginning October 11, 2006, and continuing through the end of the claimant's healing period or until such time as he return to gainful employment, a date to be determined, as a result of his compensable bilateral carpal tunnel syndrome of on or about September 1, 2006. Said sums accrued shall be paid in lump without discount.

Respondents are further ordered and directed to pay all reasonably related medical, hospital, nursing and other apparatus expenses growing out of the claimant's compensable injury of on or about September 1, 2006, to include medial related travel.

Maximum attorney fees are herein awarded to the claimant's attorney on the controverted indemnity benefits herein awarded, pursuant to Ark. Code Ann. §11-9-715.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809, until paid.

Matters not addressed herein are expressly reserved.

IT IS SO ORDERED.

Andrew L. Blood, ADMINISTRATIVE LAW JUDGE