

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F611283

PEGGY STRIDER	CLAIMANT
STAFFMARK	RESPONDENT
AIG CLAIM SERVICE INSURANCE CARRIER	RESPONDENT

OPINION FILED AUGUST 7, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by CAROL WORLEY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on July 3, 2007, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on March 6, 2007. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

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

2. On July 6, 2006, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury in the form of right carpal tunnel.

4. The claimant is entitled to a weekly compensation rate of \$165.00 for temporary total disability and \$154.00 for permanent partial disability.

5. Temporary total disability has been paid to October 23, 2006.

6. The respondents accept all medical treatment for this claimant's compensable injury that is reasonable and necessary.

By agreement of the parties the issues to litigate are limited to the following:

1. Claimant's entitlement to 505(a) benefits.
2. Attorney's fees.

In regard to the foregoing issues the claimant contends that she is entitled to additional medical as well as 505(a) benefits.

In regard to the foregoing issues the respondents contend that the claimant was released with 0 percent permanent partial impairment by Dr. Kahler, her treating physician. She was deemed at maximum medical improvement on November 14, 2006, and not given any restrictions or limitations in her activity. The claimant was working at Helping Hands through the respondent around the middle of November 2006 when the claimant was terminated due to her falsifying some time cards while working for Helping Hands. This occurred after she had received her full release from the doctor. The respondents contend that it was a reasonable decision not to bring the claimant back to work through the respondent.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No.

1. The claimant submitted medical evidence marked Claimant's Exhibit No. 1. The respondents submitted medical information marked Respondents' Exhibit No. 1 and non medical marked Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant testified that she was forty-four years old and had gone as far as the sixth grade in school. The claimant testified that she has never received her GED. The claimant testified that she began working through the respondent in May 2006 and was placed at Glad's working on the zipper machine. The claimant testified that on July 6, 2006, the machine on which she was working got jammed and she went up to get the equipment running and as she was coming down the stairs she fell and hit her arm. The claimant testified that she did not think too much about it at the time and, therefore did not report a work-related accident. The claimant testified that that night she realized that her arm was injured because it was burning like it was on fire. The claimant testified that she went to her own doctor on July 7 which was her day off. The claimant testified that she returned to work on the tenth and reported her injury to the respondent and was told that they were not going to document the event at that time but if she needed to go to the doctor to let them know. The claimant testified that she asked to be seen by a doctor every other day throughout the month of July and eventually in August the respondents sent her to the doctor.

The claimant testified that she eventually was seen by Dr. Taylor who did surgery on her arm on October 3, 2006. The claimant testified that she was off work for two to three weeks and when she was returned to work by Dr. Taylor it was on light duty. The claimant testified that she was not returned to work at Glad but was sent by the respondent to work light duty at Helping Hands. The claimant testified that at Helping Hands she hung cloths, put up dishes, and unloaded cars. The claimant testified that she worked at Helping Hands for approximately three weeks. The claimant testified that at some point Dr. Taylor released her to full duty regular work and she took this note to the respondents. The claimant testified that when she took her full release in she was not returned to work at Glad but was terminated.

The claimant testified that while she worked at Helping Hands she was supervised by Bill and Angela. The claimant testified that she filled out her own time card. The claimant testified that in the third week she was taking her lunch break out back and was asked by her supervisor to help unload a car. The claimant again testified that she was responsible for putting down the number of hours she worked each day. The claimant testified that she would add her hours at the end of the week and Bill, her supervisor at Helping Hands, would sign the card. The claimant testified that she then would take the card to Staffmark keeping a copy for herself. The claimant testified that the pen she used to total her hours was a different color than what she had used putting her hours in each day. The claimant testified that the next day, Alma,

who worked for the respondent called her and told her that she had been terminated. The claimant testified that she then went to the respondent's office to discuss her termination. The claimant testified that she told Alma that she had not taken her lunches and had worked through that period of time and it was her understanding that they would just deduct the time that she had worked through lunch from her time card. The claimant testified that she never had any kind of disciplinary action while working for the respondent nor had she ever received any kind of a warning from the supervisor. The claimant testified that after she was released by her treating physician it was her wish to be returned by the respondent to work at Glad. The claimant testified that she began to look for work immediately. The claimant testified that there were several jobs at Glad and other positions with the respondent that she feels she is capable of performing. The claimant testified that the job that she had at Glad on the zipper line is a job she would not be able to do. The claimant agreed that she would be able to do the work which Helping Hands provided. The claimant testified that she has a hard time squeezing things for a long period of time and she cannot lift anything heavy.

The claimant testified that she currently is working for Customer Testing Laboratory where they test clothing. The claimant testified that she began this job just shortly before Valentine's Day of 2007. The claimant, when asked, admitted that she has been convicted of a crime in 1999 at a time when she was using drugs and forged a check. The claimant testified that she has had one other

workers' compensation claim and this was due to an injury to her low back.

On cross examination, the claimant agreed that she went to work at Helping Hands on light duty and that she could physically do that work. The claimant also agreed that she was given a full release by her doctor on November 14, 2006. The claimant testified that the reason she cannot directly apply for work at Glad Manufacturing was because they require a GED and she does not have one. The claimant testified that she plans to stay with the job she presently has. The claimant testified that she is not working under any restrictions from her doctor and that she has not attempted to get a return appointment with Dr. Taylor. The claimant agreed that her current job requires her to do hand washing of cloths eight hours a day and that at her deposition she testified that her hand hurts maybe one day a week. The claimant agreed that she has not taken any over the counter pain medications. The claimant testified that her current job pays more than what she was earning with the respondent. The claimant testified that Alma who works for the respondent explained to her that the reason she could not return to work for the respondent was because of the time cards. The claimant testified that she knew that she was suppose to sign out for lunch while working for Helping Hands. The claimant agreed that her supervisor at Helping Hands, Bill, does not know what she was doing during her lunches. The claimant again testified that she was aware that she was suppose to clock out during her lunch hour.

On redirect examination, the claimant testified that she learned that she was suppose to clock out during her lunches on the last day she worked on Friday. The claimant testified that she got this knowledge after she had already worked through her lunches all week long. The claimant testified that she was given three reasons by the respondent as to why she was not returned to work at Glad. The claimant testified that first of all she was told that Glad did not want her back, secondly she was told that the respondents' representative out at Glad did not want her to come back to work and thirdly she was told that she had falsified her time cards.

On recross examination, the claimant was asked if she knew that she was only allowed to work forty hours a week while working at Helping Hands. The claimant responded that she did not know that she was limited to just forty hours. The claimant testified that no one not even Bill Crawford told her that.

Melania Carter testified that she is the onsite manager for the respondent at Glad Manufacturing. Ms. Carter testified that she has been at this job for a year and a half. Ms. Carter testified that the time card procedure is different at Glad than it is at other places in that when an employee actually clocks in they are given an eight-hour day and automatically a lunch period is deducted from the card. Ms. Carter testified that the respondent's normal procedure is that when an employee is hired they are put through an orientation which explains that they are to work a forty-hour week with a one hour lunch break. Ms. Carter testified

that she does not know what procedure was reviewed with the claimant when she went to work with Helping Hands.

On cross examination, Ms. Carter testified that it was not her testimony that the claimant had forged her time card just that she had not been approved to not take her lunch break. Ms. Carter agreed that the claimant was just working more than what she was approved to work. Ms. Carter agreed that the respondent has jobs available that would be a lighter duty work than that at Glad and they would have been positions available to the claimant to return to work if she had not been terminated.

Bill Crawford testified that he is the manager of Helping Hands and has been in that position for eighteen months. Mr. Crawford testified that the personnel which Helping Hands employees through the respondent are allowed to work forty hours per week. Mr. Crawford testified that the three time cards that the claimant turned in the first two for the first two weeks of work were in his hand writing and the third one had been totaled by the claimant. This witness testified that the third one indicated no deduction for a lunch break. Mr. Crawford testified that he was unaware that the claimant was indicating that she was not taking a lunch break. Mr. Crawford testified that Helping Hands does not have their employees work during their lunch break and that he has no control over what the employees do during their lunch break.

On cross examination, Mr. Crawford testified that there is not a specific per say lunch time scheduled during the day. Mr. Crawford testified that not everyone in the store is to take the

same lunch hour. Mr. Crawford testified that some of the employees do take their lunch and sit out on the loading dock at the back of the building. Mr. Crawford agreed that the public does come to the loading dock to drop off things. Mr. Crawford testified that he does remember the claimant and he did not have any complaints about her when she was a worker.

On rebuttal the claimant testified that she was not aware of a rotation system as to the different jobs at Glad. The claimant was asked about a job she was offered at Daisy Manufacturing after she was given her full release. The claimant testified that this job was in Neosho, Missouri, and the job at Glad was only two blocks from her hours.

Medical is not an issue in this matter. The record does contain medical records indicating that the claimant was diagnosed and treated for right hand carpal tunnel. Dr. Jacob Kaler performed a right carpal tunnel release on the claimant on October 3, 2006. Dr. Michael Griffey on October 18, 2006, released the claimant to light duty work beginning on Monday, October 23, 2006. On November 14, 2006, Dr. Kaler released the claimant to regular duty following her right carpal tunnel release. Dr. Kaler writes on November 17, 2006, that the claimant has full action flexion and extension of her right wrist and he would assess her with a zero impairment rating.

After a complete review of this entire record, I find that the claimant has failed to prove by a preponderance of the evidence that she is entitled to 505(a) benefits. The claimant, in this

case, did experience a compensable injury while working for the respondent at Glad Manufacturing. The claimant was released to light duty work following her right carpal tunnel surgery on October 3, 2006. The respondent placed the claimant back at work on light duty at another employment location. The claimant was released by her treating physician to full duty work on November 14, 2006, and then in a letter dated November 17, 2006, her treating physician assessed her with a zero impairment rating. The testimony has been that the claimant was terminated for falsification of time cards and she was terminated after she had been given a full release to return to work. It is quite clear that the respondent did return the claimant to work within her physical limitations and it was a question of the claimant's honesty which brought about her termination after she had been released to full duty. The respondent certainly had no obligation to return the claimant to work at Glad Manufacturing.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On July 6, 2006, the relationship of employee-employer-carrier existed between the parties.
3. The claimant sustained a compensable injury in the form of right carpal tunnel.
4. The claimant is entitled to a weekly compensation rate of \$165.00 for temporary total disability and \$154.00 for permanent partial disability.

5. Temporary total disability has been paid to October 23, 2006.

6. The respondents accept all medical treatment for this claimant's compensable injury that is reasonable and necessary.

7. The claimant has failed to prove by a preponderance of the evidence that she is entitled to 505(a) benefits. See discussion above.

ORDER

The claimant has failed to prove by a preponderance of the evidence that she is entitled to 505(a) benefits. Therefore, this claim for 505(a) benefits is denied in its entirety.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE