

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F508325

JANICE K. SWAFFORD, EMPLOYEE	CLAIMANT
POCAHONTAS PUBLIC SCHOOLS, SELF-INSURED EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, TPA	RESPONDENT

OPINION FILED FEBRUARY 5, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on December 1, 2006, at Jonesboro, Craighead County, Arkansas.

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

Respondent represented by the HONORABLE MICHAEL E. RYBURN, 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 September 26, 2007, a pre-hearing 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 Janice K. Swafford, the claimant, coupled with medical reports and

other documents comprise the record in this claim. The parties withdrew the stipulation relative to the claimant's compensation benefits rate, however anticipate reaching an agreement relative to same.

DISCUSSION

Janice K. Swafford, the claimant with a date of birth of July 9, 1955, has an eighth grade education. Claimant commenced her employment with respondent on August 7, 2000, as a custodian. Prior to her employment by respondent claimant worked for five years at Paragould High School and for four years for Craighead County. Claimant performed custodial work for each of the prior employers, which were schools.

Claimant testified that she was in good general health prior to July 27, 2005, and had not missed any significant time from work due to injuries or illnesses. Claimant noted that she had been sick with the flu during the winter, during which time she may have missed time from work. Prior to July 27, 2005, claimant's testimony reflects that the health of her arms, wrist, elbow and hands was fine as far as she was aware, in that she had no problems with them whatsoever. Claimant denied that she had been treated by a medical doctor regarding her upper extremities during the months or years leading up to July 27, 2005.

In describing her job duties in the employment of respondent, claimant testified that she cleaned the bathrooms, dust mopped, wet mopped, used a machine to buff, scrub, strip and wax the floors. Claimant noted that she did a lot of work maintaining the floors. Regarding her use of the buffer with the scrubber claimant testified:

The hardest part was summertime using the scrubber. I would take it and use it eight hours a day every day during the summer.

A scrubber is where you take and strip the wax off the floors. You have to take and use grip, I mean very much so with both hands. One to guide it, and the other to hold your - - (T. 11).

The claimant described the scrubbing machine as looking like a round buffing pad on the bottom of it with handles similar to a lawn mower and noted that she stood upright and walked as she operates it on the floors. The claimant described in detail the manner in which operated the scrubbing. (T. 12). Claimant maintains that she used the machine on the school's floors eight hours a day, five days a week during the summertime, when the school does it maintenance work. Claimant noted that "a lot of pressure, severe pressure, a lot of grip" using both hands was applied continuously in operating the machine. Claimant estimates that she operated the machine 45 minutes to an hour before having to cease to put a solution on the floor.

During the school year, claimant testified, she performed a similar job, high speed buffer, as that performed during the summer. Claimant explained that the high speed buffer was a heavier and faster typ machine than that used in the scrubbing process. In terms of the physical aspect of the high speed buffer job, claimant's testimony reflects:

It was basically the same, almost the same. It was heavier. And you had to go up and down the hallways for an hour and a half to two hours. (T. 14).

While the claimant acknowledged that she had other duties to perform during the school year, she maintains that she had to do some buffing every day, and that the same was particularly heavy during the basketball season. Claimant's other duties included dust mopping, wet mopping and cleaning the bathrooms.

Claimant asserts that despite all of her employment duties, prior to July 27, 2005, she enjoyed good health. Claimant suffered an accident on July 27, 2005, which serves as the basis

for the present claim. Claimant's testimony reflects, in describing the accident:

I was finishing up my classrooms moving - - I had already had the floor stripped and waxed. And I was putting the teacher's desk back in the classroom by myself. I did not move it out into the hallway, but I moved the teacher's desk back. The dolly handle, and it was a steel t-bar handle. And I pushed the dolly under the desk, and moved it through the doorway, and started to set the desk down. When I went to release the handle so that the desk would sit down and when I tripped it with my left foot somehow or another my hand got pinned against the desk. The steel bar handle grazed my elbow and pinned my wrist at that time. (T. 15-16).

The claimant's right elbow was struck by the dolly handle, and her right wrist was pinned against the desk. In her effort to extract her logged/pinned arm claimant testified:

Yes, sir. The first though when I came, you know, when I realized what had happened, I was trying to yank my arm out. But it - -

Probably so. I didn't know. All I knew was when I saw my arm pinned, I was trying to get it out, or release the handle. And when I did, I pulled the handle up and it got my arm. (T. 17).

Claimant testified that as a result of the above, she felt immediate pain and numbness:

The pain was numb from my fingers all the way up to my right shoulder. And it stayed numb for quite a while. (T. 17).

Claimant testified that she reported the injury to a supervisor and was sent to Dr. Alex Baltz by respondent. Claimant was later referred by Dr. Baltz to Dr. Edward Cooper, a Jonesboro orthopedic physician. Claimant's testimony reflects that she remained under care of Dr. Cooper for several months. Claimant testified that she continued to experience the same kind of pain the first month or two following her accident. Claimant's testimony reflects that later the pain got worse:

The pain went from my right wrist up to my elbow. And then it progressed from my elbow up to my shoulder. (T. 18).

The claimant was subsequently referred by Dr. Cooper to another physician, Dr. Michael M. Moore, a Little Rock Orthopedic surgeon and hand specialist. Claimant continued to work “light” or restricted duty. During the period of August through October, 2005, while the claimant was being treated by Dr. Cooper she was wearing a splint on her right wrist.

Claimant described the splint as coming around her thumb and wrist up her arm almost to the elbow. Claimant testified that in terms of job duties during this period, she was still attempting to put the desks back in the classrooms and straightening them up using her left hand only. Claimant also continued cleaning the restrooms. During the period that she was performing her job duties with her left hand only, claimant testified that she started developing problems with the left hand:

From the strain fo putting all the work on my left hand, I was having severe pain in it from my wrist going up to my elbow.

* * *

I would have to do mainly dust mopping. I tried wet mopping, but I simply could not do it. They had to get somebody else to do that.

Okay. The dust mop, I would have to twist my arm around and grip it to handle it. And I would use the dust mop. (T. 20-21).

Claimant’s testimony reflects that she dust mopped every day, and that at least four hours per day was devoted to dust mopping, pushing broom or otherwise performing her job duties August through October 2005, using only her left hand.

While treating with Dr. Moore claimant was referred by same to Dr. Rutherford, a Little Rock neurologist. On November 3, 2005, claimant relayed her complaint regarding her left hand to Dr. Rutherford:

I told him that my left hand was bothering me, and it was bothering me severely. That I could not do some of my janitorial duties. (T. 22).

Claimant testified that she told Dr. Rutherford that her left hand complaints were brought on by the fact that she was unable to use her right hand. An EMG/NCV performed by Dr. Rutherford disclosed the presence of carpal tunnel syndrome in both of claimant's arms.

Claimant maintains that the area of her injury that hurt the most during the later part of 2005, September through December, was her right arm and right elbow. The claimant explained why she declined the suggested surgery to her left arm:

Because my right arm, I could not do the work that I was suppose to at school with my right arm only. And I knew surgery would take away from my job. I mean I simply could not do it because of the pain.(T. 24).

The testimony of the claimant reflects that at some point she was examined by Dr. Rosenzweig, a Little Rock orthopedic physician, and a diagnosis of reflex sympathetic dystrophy, RSD, was rendered. During the time that the afore diagnosis was rendered, November and December 2005, the claimant was continuing to work. Claimant testified that her treatment under the care of Dr. Rosenzweig for the diagnosed RSD consisted of four injection in the form of stellate ganglion blocks in her left and right wrist. Claimant noted that the treatment was not helpful in reducing her symptoms. Claimant testified that after she continued to tell Dr. Rutherford that the treatment was not beneficial, he appeared to change him mind about the RSD diagnosis.

In February 2006, claimant was returned to the care of Dr. Moore by Dr. Rutherford. Claimant denies that medical treatment was provided to her by Dr. Moore upon being returned to the care of same. Claimant was taking medication, Neurontin and the Catapress patch, which

had been prescribed by Dr. Rutherford, however she maintains that they were not helping with her symptoms. Claimant testified that she continued to tell her treating physicians about the problems that she was having with her right hand, which has not gotten any better.

In March 2006, the claimant was referred by Dr. Rutherford to functional capacity evaluation. The FCE was performed by Mr. Rick Byrd. Claimant asserts that she put forth her best effort during the FCE. While the claimant's testimony reflects that the FCE was a painful process, she further testified that there is no doubt in her mind that she put forth a valid effort.

Following the FCE, on April 13, 2006, the claimant returned to Dr. Rutherford. Claimant testified, regarding the April 13, 2006, visit:

I went back and he took and wanted another nerve conduction. He took and gave that. And after that nerve conduction, my right arm continuously got worse. I could not stand the pain - - (T. 27).

Regarding her conversation with and observation of Dr. Rutherford during the visit, claimant testified:

I went in. He told me that I had failed the LCE [FCE] test with Rick Byrd. He got very hateful. (T. 27).

Claimant asserts that the duration of the examination by Dr. Rutherford was only about five minutes.

The evidence reflects that each of the physicians to treat or examine the claimant relative to her July 27, 2005, complaints had been chosen by the respondent. Claimant testified that by the time of the April 13, 2006, visit to Dr. Rutherford she had become frustrated with what she was being told and the fact that her credibility was being questioned. As a consequence of the afore, claimant contacted Dr. Tuck, a Jonesboro neurosurgeon, based on a recommendation of a

friend. The claimant acknowledged that she did not seek approval respondent to see Dr. Tuck or authorization from the Commission to change treating physician. Claimant testified, regarding her decision to go to Dr. Tuck:

Because I still had a problem. It was not being fulfilled with the doctors that I had been to. And I wanted something done. (T. 28).

The claimant does not recall a recommendation for further testing in the form of an EMG by Dr. Tuck.

Claimant testimony reflects that she made an appointment with her primary care physician, Dr. Bonner, who later referred her to Dr. Spanos for additional testing. After Dr. Spanos performed the EMG, claimant returned to Dr. Tuck in May 2006, with the test results. Claimant testified that her understanding of her problems, based on the testing and visit with Dr. Tuck, are CTS and ulnar nerve.

Claimant was released by Dr. Rutherford in April 2006. After obtaining the test results of Dr. Spanos and seeing Dr. Tuck with the test results, claimant was directed by respondent to return to Dr. Moore and Dr. Rutherford in June 2006, and to see Dr. Bindra in July 2006. Claimant maintains that the afore visits that not result in any help in terms of addressing her symptoms or complaints.

The testimony of the claimant reflects that she did not have another conversation with Ms. Charlotte Flanigan, the claims adjuster, until August 21, 2006, at which time she was told that her claim was close. Claimant asserts that it was at that time that she requested a change of physician to Dr. Tuck. Claimant testified that she was told by Ms. Flanigan that she could not see Dr. Tuck because she was not on "the list". (T. 32).

Claimant acknowledged that she decided to continue to see Dr. Tuck, who eventually performed surgery on her right hand. Regarding the surgery, claimant testified:

She done carpal tunnel surgery on my right hand August 24th .
And an ulnar nerve on my right elbow August 24th . And I came through
that, doing fine. (T. 33).

Approximately three post-surgery, claimant testified that the right arm is a lot better as a result of the surgery, although she acknowledges that she still has some pain in it. Claimant provided testimony regarding the function that she has gained in the right arm since the surgery:

I have more grip in it that what I had before. It's not 100%, but
it is a lot better than what it was. Before I could not grip. (T. 34).

Claimant testified that she is very please with the results from the right arm surgery.

On September 11, 2006, claimant underwent a carpal tunnel release on the left by Dr. Tuck, from which she is still healing. Claimant remains within her healing period from the left CTS release surgery and is continuing physical therapy. Claimant testified, regarding the September 11, 2006, surgery:

I'm still having problems with it. I'm still in with outpatient
therapy. As far as grip and numbness in it, I still have problems. (T. 34).

Claimant does not that the pain in the left wrist since the surgery is not as great as before the surgery.

The testimony of the claimant reflects that she last worked August 23, 2006. Prior to the afore, claimant missed work from May 24, 2006 through July 12, 2006, pursuant to the directions of Dr. Tuck. Claimant anticipates a release to return to work following her December 11, 2006, follow-up visit to Dr. Tuck.

Claimant attributes both her left and right upper extremity complaints to her July 27,

2005, accident at work. Regarding the source of the left hand complaint, claimant testified:

I'd say it's due to my job because of wiping tables. I had students in there and I had to wipe tables every day. There's like 144 students there. Doing a lot of holding the spray trigger. You have to have grip. Just doing my job. (T. 37).

Claimant performed the afore job tasks with her left hand while the right hand was in a splint from the July 27, 2005, accident.

On cross-examination, claimant again confirmed that she had not problems with either of her hands prior to July 27, 2005, and neither had she experienced numbness or tingling in her extremities. Further, claimant testified that her job duties had been the same and had not changed prior to July 27, 2005. Claimant concedes that the July 27, 2005, accident affected her right hand and arm. Claimant maintains that her right arm and hand problems are the product of a specific incident injury of July 27, 2005, while her left hand complaint is due to a gradual injury. Claimant concedes that EMG/NCV studies showed bilateral carpal tunnel syndrome at the time of the first appointment.

Claimant continued working following the July 27, 2005, accident for a long period. Claimant worked light duty, however she maintains that the symptoms in her right arm and hand did not improve during that period. Claimant testified that light duties excluded wet mopping. Claimant continued to dust mop and clean the restrooms.

The testimony of the claimant reflects that she did not see a physician for her left hand symptoms alone. Claimant acknowledged seeing Dr. Moore in Little Rock at one point for both problems, and that she was aware that he has opined that the left hand complaint is not related to the right hand injury.

The testimony of the claimant reflects that following her referral to Dr. Cooper, the Jonesboro orthopedic physician, to whom she was referred by Dr. Baltz, after application of the splint to her right wrist, she was returned to work and told to continue doing as best she could. (T. 40). Claimant was referred by Dr. Cooper to Dr. Moore, a hand surgeon. Claimant acknowledged that while she was seen by Dr. Moore on several occasions, he did not perform surgery.

Claimant acknowledged that when she applied to the Commission for a change of physician she asked to be seen by Dr. Ricca in Jonesboro. Claimant had never been seen previously by Dr. Ricca. Claimant explained why she was not seen by Dr. Ricca after having requested the change to him:

I asked for him. And I had planned on going to see him. But then workers' comp told me that I could not see him.

Because I had already went to see Dr. Tuck. And they would not allow her, because I had asked for a change for Dr. Ricca. (T. 42).

The evidence in the record reflects that the Commission sent the claimant a letter granting her change of physician to Dr. Ricca. Claimant testified:

Yes. And I had already got all my stuff together to go see him. And then they said no since I had went to see Dr. Tuck on my own. They would not recommend or let - - (T. 43).

Claimant explained why she went to Dr. Tuck when a pending appointment was scheduled with Dr. Ricca, pursuant to the change of physician request:

Because I, during the meantime, workman's comp had sent me to Little Rock again back to Dr. Rutherford for another nerve conduction. And they did not find the problem. They said there was none. (T. 43).

The testimony of the claimant reflects that the earliest that she could get an appointment with Dr.

Ricca was July 2006.

Claimant acknowledged signing the AR- Form N on July 27, 2005. Claimant testified that she understood that she was suppose to go through either the Commission or the insurance carrier to get another doctor. Claimant testified that she turned in visit to Dr. Tuck to Blue Cross and Blue Shield, her group health care carrier. Claimant's testimony reflects that group insurance carrier paid Dr. Tuck's bill.

The claimant testified that in her discussion with Ms. Flanigan regarding Dr. Tuck, she was informed that Dr. Tuck was considered unauthorized medical treatment. Claimant explained why she took no further efforts to get the Workers' Compensation Commission involved in the decision rendered by the respondent:

No, sir because Charlotte had closed my case. And I was still in pain. So that's when I decided to go ahead and have surgery on my right arm. I needed it. (T. 46).

The claimant's referenced to the claims adjuster closing her case is in regard to her August 21, 2006, conversation with same.

The testimony of the claimant reflects that she was seen on two occasions by Dr. Bindra at UAMS. Claimant acknowledged that Dr. Bindra did not recommend surgery.

The testimony of the claimant reflects that she works year round as a custodian. Claimant testified that during the summer while the students are out she continues performing custodian tasks at the school. The claimant's annual salary is \$20,680.00. There is testimony reflecting the presence of a contract with 240 days of work. Claimant testified that there are times when she does not work during the year.

The medical in the record reflects that the claimant was seen on July 27, 2005, by Dr.

Alex Baltz relative to her work-related injury of the same date. The July 27, 2005, office note reflects, in pertinent part:

S: Ms. Swafford presents today with complaint of injury to her right wrist and elbow which occurred at work today. She was moving a teacher's desk that was on wheels and when she pressed the lever with her foot to raise it a lever sprang back striking her right elbow and at the base of right thumb and the wrist. The pain was moderate in intensity and described as sharp and throbbing.

O: Vital signs: . . . Examination of the right upper extremity reveals good range of motion at the elbow with a slight contusion to the lateral portion of the elbow. This is somewhat tender to palpation. She has significant swelling over the 1st metacarpal and is very tender to palpation over 1st carpal metacarpal joint. Range of motion of the right thumb is somewhat limited due to pain as is range of motion of the right wrist. She has pretty good grip strength, however examination of the left upper extremity for comparison is normal.

A & P:

1. Right wrist and elbow contusion. I am going to place her in a right wrist brace. She is to use ice regularly today as well as Ibuprofen 600 mg 3 x a day for the next couple of days for the pain, she may also use Tylenol as needed. I have suggested that she not return to work today and rest her arm due to the injury. . . . (CX. #1, p. 1).

The medical records reflect that the claimant was seen by Dr. R. Edward Cooper, Jr., a Jonesboro orthopedic physician, on August 16, 2005, pursuant to a referral of Dr. Baltz for complaints of pain to her right shoulder, elbow and wrist, attributable to the July 27, 2005, accident. The impression of the claimant's injury, as reflected in the chart notes of Dr. Cooper following his examination of was that of Basilar joint injury to the right thumb. In terms of treatment, Dr. Cooper placed the claimant's right thumb in a thumb spica splint, provided medication, and authorized the claimant to return to light duty work activity with minimal use of the right upper extremity as tolerated.

The claimant was again seen by Dr. Cooper on August 24, 2005 and September 13, 2005.

The September 13, 2005, chart note reflects, in pertinent part:

. . . She continues to have significant right wrist pain. It is more centered in the radiocarpal joint of the wrist near the radial scaphoid joint than it is over the trapezoidal metacarpal joint. Today she has some problems. When she lets her hand down, she has swelling and some numbness in the hand at times. All of her symptoms, however, are fairly non-specific other than the significant tenderness which is diffusely present in the wrist. (CX. #1, p.4).

Dr. Cooper arranged for an MRI of the right wrist during the September 13, 2005, visit. During the claimant's September 21, 2005, follow-up visit, Dr. Cooper noted:

. . . . Today she continues to complain of right thumb pain at the base of the thumb basilar joint. In addition, she has numbness that involves the digits and continued swelling when she tries to use her hand. The MRI was performed and does show soft tissue edema in the area of the basilar joint indicating some ligamentous injury there. There is also some mild widening of the scapholunate interval, but no obvious fractures, dislocations or other severe abnormalities could be detected.

* * *

PLAN:

1. We will refer her to the hand subspecialist to try to see if they can elucidate the etiology and specifically what is going on. Certainly her symptoms have been out of proportion for the objective injury and it is difficult to say what is the cause. (CX. #1, p. 5).

In accordance with the above, the claimant was seen at the Arkansas Hand Center on October 11, 2005, by Dr. Michael M. Moore, for an evaluation of her right hand and arm, growing out of her July 27, 2005, work-related accident. The October 11, 2005, report of Dr. Moore reflects, in pertinent part:

Dr. Cooper, it is my opinion Ms. Swafford's clinical history and physical examination are consistent with right hand and arm pain. Her subjective

symptoms seem to outweigh her physical findings. She describes diffuse pain symptoms in the hand, wrist, and arm. Her physical examination does not reveal significant swelling in the wrist, hand, or arm. In addition, Ms. Swafford describes multiple areas of pain in the right upper extremity.

Due to the fact that her symptoms have persisted, it was my opinion further evaluation was indicated. Ms. Swafford's right hand and arm will be evaluated with a triphasic bone scan. Following the study, she will be evaluated by Dr. Reginald Rutherford to include a nerve conduction and EMG study. I informed her that I would see her in the future if Dr. Rutherford felt my participation in her care was indicated. If the bone scan study and nerve conduction and EMG study are normal, I suspect Dr. Rutherford may recommend a Functional Capacity Evaluation to be performed by Mr. Rick Byrd. If an objective study reveals an abnormality that could explain her right hand and arm pain symptoms, further treatment may be indicated. Ms. Swafford understands and agrees with the treatment plan as outlined and all questions were answered. (CX. #1, p. 7-8).

On November 3, 2005, the claimant was evaluated and underwent electrodiagnostic testing under the care of Dr. Reginald Rutherford. The EMG report relative to the study reflects, in pertinent part:

The nerve conduction study is abnormal demonstrating evidence of bilateral carpal tunnel syndrome. Changes are mild on the right and moderate on the left. Clinical picture and triphasic bone scan also demonstrate evidence for reflex sympathetic dystrophy right hand. The latter represents Ms. Swafford's dominant clinical problem at present. She will proceed to treatment with Neurotin, Clonidine patch, stress loading and stellate ganglion blocks. She will be seen in follow up upon completion of the second stellate ganglion block. Once her RSD is in remission she will require further treatment For the carpal tunnel syndrome. (CX. #1, p. 11).

Dr. Rutherford referred the claimant to Dr. Kenneth M. Rosenzweig for a consultation relative to the diagnosed RSD. The claimant was seen by Dr. Rosenzweig on November 9, 2005, and in his report relative to the visit Dr. Rosenzweig noted:

EXTREMITIES: her right upper extremity shows skin changes with radical deformity, coolness and all pain consistent with RSD.

IMPRESSION:

Reflex sympathetic dystrophy.

PLAN:

There appears to be no contraindication to proceed with stellate ganglion blocks regarding any anatomical variances, drug allergies, or hypersensitivity. Ms. Swafford was counseled regarding the risks and benefits of the injection, the potential areas of the injection and the intended benefit. All questions were answered, and informed consent was given to proceed on as requested. (CX. #1, p. 12-13).

In a November 16, 2005, clinic note, Dr. Rutherford reported that the claimant was responding to her treatment for RSD and would be seen in follow up after the fourth sympathetic block. (CX. #1, p. 14). Claimant was again seen by Dr. Rutherford on January 4, 2006, and the clinic note relative to the visit reflects, in pertinent part:

. . . Her hand remains improved. She does not require further structured therapy. She will continue Neurontin and Clonidine patch without change. She reports that following her last stellate ganglion block she developed difficulty with her heart which she reports occurred five minutes following the procedure. This is the first that I have heard of this it being of note that I saw her following the fourth block and no mention was made of this. She has seen a cardiologist in her home community. It does not appear that any further action is required in this sphere. Ms. Swafford will proceed to a follow up triphasic bone scan to be compared with previous to clarify whether or not her previously documented reflex sympathetic dystrophy has resolved. When this is realized she will require follow up with Dr. Moore regarding her previously documented carpal tunnel syndrome. (CX. #1, p. 15).

A January 19, 2006, clinic note of Dr. Rutherford relative to the claimant reflects that the bone scan demonstrated significant improvement in the RSD. Claimant was directed to follow-up with Dr. Moore for possible future treatment of the diagnosed carpal tunnel syndrome. Based on the prior electrodiagnostic testing reflecting mild change in the right and moderate change in the left, the January 19, 2006, clinic note offered:

. . . . If surgery is considered I would recommend that this be limited

to the left hand. It should be possible to operate on the left median nerve without perioperative stellate ganglion blocks. It is recommended that Ms. Swafford stay on Clonidine patch and Neurontin for an additional two months at which point tapering and discontinuation should prove possible. Ms. Swafford will be seen in follow up in two months time. (CX. #1, p. 16).

On February 7, 2006, the claimant was seen in follow-up by Dr. Moore. The clinic note relative to the visit reflects that the same was for evaluation of the claimant's left hand, which was diagnosed, based on the EMG study of November 3, 2005, as moderate left carpal tunnel syndrome. The clinic note reflects symptoms of intermittent, mild numbness in the fingers of the left hand. The clinic note further reflects:

The review of systems referable to the musculoskeletal system is pertinent for persistent right hand pain symptoms related to reflex sympathetic dystrophy and a mild right carpal tunnel syndrome. The reflex sympathetic dystrophy is currently being evaluated and treated by Dr. Rutherford.

In regards to her left hand, Ms. Swafford's physical examination reveals a negative Tinel' and Phalen's.

I discussed treatment options at length with Ms. Swafford, which included splinting, injection and splinting, or carpal tunnel surgery. At this time, she does not feel her left hand symptoms warrant surgical treatment. She will continue to wear a splint as needed.

Ms. Swafford is scheduled to see Dr. Rutherford for follow up evaluation to her right hand. I had a discussion with him regarding Ms. Swafford. It may be reasonable to repeat the triphasic bone scan to see if the reflex sympathetic dystrophy has improved. In addition, a Functional Capacity Evaluation performed by Mr. Rick Byrd may be indicated. I will defer to Dr. Rutherford's opinion regarding these matters. I informed her that I would see her in the future if Dr. Rutherford felt my participation in her care was indicated. (CX. #1, p. 17).

The March 16, 2006, clinic note of Dr. Rutherford relative to the claimant reflects that the bone scan revealed substantive improvement in the RSD, which appeared to be in remission.

The clinic note further reflects:

Ms. Swafford does report that when she discontinued Neurontin she did note increased pain. It is clear from her account of events that she will require Neurontin and Clonidine for some time. She is also concerned regarding her current functional capabilities. This should be addressed by an FCE with Rick Byrd. Finally, she again mentioned this issue pertaining to adverse reaction to her fourth stellate ganglion block. I have no documentation pertaining to this. This issue was outlined in my January 4, 2006 note. Ms. Swafford will be seen in follow up once she completes her FCE. (CX. #1, p. 18).

On March 27, 2006, the claimant underwent a functional capacity evaluation at Functional Testing Centers, Inc., by Mr. Rick Byrd, pursuant to the referral by Dr. Rutherford. In his March 27, 2006, report relative to the FCE of the claimant, Mr. Byrd noted:

The results of this evaluation suggest that Ms. Swafford gave an unreliable effort, with 17 of 49 consistency measures within expected limits. Ms. Swafford put forth totally unreliable effort and demonstrates inappropriate pain behavior.

* * *

Ms. Swafford's true functional abilities remain unknown. Ms. Swafford exhibited totally inappropriate effort not only to her RUE but also to the LUE. (RX. #1, p. 30-31).

The claimant was seen in follow-up by Dr. Rutherford on April 13, 2006. After noting the results of the March 27, 2006, FCE and furnishing a copy of the summary of same to the claimant, Dr. Rutherford reported that the claimant was at maximum medical improvement, declined to recommend work place restriction or to recommend a permanent partial impairment rating. (RX. #1, p. 25).

On April 21, 2006, the claimant was evaluated by Dr. Rebecca Barrett-Tuck, a Jonesboro neurosurgeon, pursuant to a referral of Dr. J. D. Bonner, the claimant's primary care physician, for a chief complaint of pain in the right arm, hand, shoulder, and neck. The April 21, 2006,

report reflects a history of the claimant's July 27, 2005, work-related accident. The report further reflects, in pertinent part:

. . . She was able to release the handle and get her hand out from between the desk and the dolly handle, however she suffered significant injury to the wrist, she reports that it was blue for many weeks. Since that time she has had pain that involves the wrist, the hand, the elbow, the shoulder, and the trapezius region on the right in association with numbness and tingling involving her whole hand and weakness of the hand. She has been treated for reflex sympathetic dystrophy. Dr. Ken Rosenswag in Little Rock has apparently given her three or four superior ganglion sympathetic blocks, however she cannot determine whether or not the procedures were helpful. She does feel that the pain seems to have worsened recently and wonders if it is possibly because she has not had a block in awhile. There are some job duties that have been a major problem for her since the strength in her hand is simply not there and she has some much pain that she also is limited in her grip. She has not had her shoulder, neck, or elbow evaluated. She did have plain films and MRI of the hand and wrist. (CX. #1, p. 19).

Following her examination of the claimant, Dr. Barrett-Tuck recommended diagnostic studies relative to the claimant's neck and shoulder as well as repeat EMG/NCV studies.

Dr. Demetrius S. Spanos, a Jonesboro neurologist, conducted the diagnostic studies which were recommended by Dr. Barrett-Tuck. The studies, relative to the claimant's right upper extremity were performed on May 10, 2006. The reports reflects, in pertinent part:

IMPRESSION: Abnormal nerve conduction velocity studies of the right upper extremity.

CONCLUSION:

- 1) Moderately severe carpal tunnel syndrome of the right upper extremity.
- 2) Entrapment of the ulnar nerve across the elbow.
- 3) No evidence of polyneuropathy is seen by nerve conduction velocity testing of the right upper extremity. The radial nerve was normal.(CX. #1, p. 25).

The claimant was again seen by Dr. Barrett-Tuck on May 24, 2006, in follow-up. The chart note relative to the visit reflects, in pertinent part:

. . . She did undergo repeat EMG/NCV by Dr. Spanos. The studies confirm moderately severe carpal tunnel syndrome on the right as well as ulnar neuropathy on the right. She has symptoms consistent with both. It is my feeling that these are work related conditions. Most likely she was developing carpal tunnel syndrome from her work, then the accident that occurred has rapidly increased the progression on the right. She has also had progressive carpal tunnel syndrome on the left. I have recommended a right carpal tunnel release and right ulnar nerve decompression. We have scheduled her for surgery next Tuesday. (CX. #1, p. 26).

Following the treatment recommendations of Dr. Barrett-Tuck, the claimant was directed to return to Dr. Rutherford, who had previously released her as MMI on April 13, 2006. Dr. Rutherford performed repeat electrodiagnostic testing at the request of Dr. Moore. The June 8, 2006, report of Dr. Rutherford reflects, regarding the test results:

The nerve conduction study does demonstrate right carpal tunnel syndrome of mild degree. This is unchanged from prior study. Ulnar nerve is entirely normal. There is no evidence of cubital tunnel syndrome. (RX. #1, p. 27).

On July 10, 2006, the claimant was evaluated by Dr. Randy R. Bindra, Professor and Director of Center for Hand and Upper Extremity Surgery, at UAMS, pursuant to the case manager secured by respondent. While the narrative report of Dr. Bindra recites that the claimant was seen by Dr. Spanos and Dr. Barrett-Tuck as well as the diagnosis and treatment recommendation it does not reflect that he had access to the diagnostic studies performed on the claimant by Dr. Spanos. The report further reflects:

On examination of the right upper extremity, there are no external scars noted. I did not localize any tender spots. This lady did have positive provocative test for carpal tunnel syndrome. Examination of the cubital tunnel was normal. The ulnar nerve was normally palpable at the elbow. On testing sensation to do a detailed sensory examination, there was significant inconsistency. Hence, a detailed sensory examination or two-point discrimination could not be achieved.

ASSESSMENT:

Based on the patient's history that has been provided, it appears that the patient did have significant forceful injury to the area of her right wrist and thumb. All her initial examination findings indicated she had soft tissue swelling around her right thumb and subsequent MRI scan also showed fluid around it suggesting she may have sustained a significant soft tissue injury around her right wrist and thumb. In September 2005, this lady began to complain of numbness in her hand, and it is likely that she began to develop symptoms of mild carpal tunnel syndrome. Although she does have evidence of bilateral carpal tunnel syndrome which may be constitutional, in this case, her symptoms of carpal tunnel syndrome in the right hand appear to have started only after the injury and about two months after the injury. As it was documented, she did have significant swelling around the base of her thumb. It is quite possible the carpal tunnel symptoms were brought on by her injury and the subsequent swelling around the wrist and hand area.

PLAN:

This lady did have documented inconsistency when she did her Functional Capacity Evaluation and on examination today when her sensory examination was inconsistent. Thus, it is possible that she has a functional overlay to her symptoms. . . . Thus, I agree with Dr. Moore that surgery for carpal tunnel syndrome will have a guarded prognosis as the patient's chronic pain did not necessarily improve after surgery. . . .(CX. #1, p.30).

The claimant under went treatment under the care of Dr. Bindra in the form of an injection with DepoMedrol mixed with lidocaine in the right carpal tunnel. Claimant was also fitted with a splint to wear at night. The report of Dr. Bindra concludes, regarding the claimant's prognosis:

If the injection and splinting help her carpal tunnel then we will be able to determine how much of her symptoms are coming from her carpal tunnel syndrome. If the injection and splinting fail to resolve her symptoms then it would be clear that her symptoms are not arising from the carpal tunnel syndrome and she has a chronic pain problem in her right upper extremity which, without any definable cause, this has a poor prognosis and will not improve. I will see this lady in a month to assess the response to her injection. (CX.#1, p. 30).

Dr. Bindra authored a light/limited duty release on behalf of the claimant. (RX. #1, p. 44).

The claimant was seen by Dr. Barrett-Tuck on August 7, 2006. The chart note relative to

the visit reflects, in pertinent part:

Ms. Swafford returns for follow up. She has not yet been approved for carpal tunnel release and ulnar nerve decompression by workman's compensation. I do feel that there are other issues that add to her discomfort. I think in all likelihood she is suffering some degree of joint pain, she has also been diagnosed with reflex sympathetic dystrophy, although I certainly no skin changes to support this diagnosis. And in an attempt to answer all her questions, I certainly cannot guarantee to her how much her symptoms will resolve with the CTR. I do think that it is more than reasonable to decompress both the median nerve and the ulnar nerve in hopes that she will get relief of most of her symptoms. I will be glad to proceed as soon as workman's compensation has given an approval for right CTR and right ulnar nerve decompression. I understand that she is to see a doctor of a second opinion in Little Rock, as well as to see Dr. Ricca for this exact same problem. We will await for word from either her or workman's compensation before proceeding further. (CX. #1, p. 30).

On or before August 21, 2006, the claimant, through her attorney, requested authorization from respondent for the recommended surgical procedures and the same was denied. (CX. #2).

On August 24, 2006, the claimant underwent right carpal tunnel release and right ulnar nerve decompression under the care of Dr. Barrett-Tuck. (CX. #1, p. 35-36). The claimant underwent left carpal tunnel release under the care of Dr. Barrett-Tuck on September 6, 2006. (CX. #1, p. 37- 40).

The claimant was seen in follow-up by Dr. Barrett-Tuck on October 9, 2006. The chart note relative to the afore visit reflects, in pertinent part:

Ms. Swafford returns for follow up. She underwent bilateral carpal tunnel releases. The right was done on August 24, 2006, the left September 7, 2006. The right has done absolutely fantastic as has her ulnar nerve decompression on the right. The left carpal tunnel has been slower to heal, it is a little more swollen and more painful for her. She does still have some bruising around the wrist on the left. She works in housekeeping. I don't think she is quite ready to return as yet. Her numbness and tingling indeed is much better but she will need a couple more weeks to recover before returning to work. I will see her back in four weeks. I would like to keep

her off until that time. (CX. #1, p. 41).

It is undisputed that the claimant received the AR Form N following her July 27, 2005, accident. (RX. #2) Further claimant acknowledged that she was made aware of the change of physician procedure relative to a work related injury.

After a thorough consideration of all of the evidence in this record, to include the testimony of the claimant, review of the medical evidence 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 July 27, 2005, and at all times pertinent, the relationship of employee-employer existed between the parties.
3. On July 27, 2005, the claimant earned an annual salary of \$20,680.00, pursuant to an employment contract providing for 240 days of work or 48- five days work weeks, yielding an average weekly wage of \$430.00, and compensation benefit rates of \$287.00/\$216.00, for temporary total/permanent partial disability.
4. On July 27, 2005, the claimant sustained an injury to her right upper extremity, to include her right wrist and right elbow, arising out of and in the course of her employment. The evidence preponderates that the claimant's diagnosed left carpal tunnel syndrome is a compensable consequence of the July 27, 2005, compensable right upper extremity injury.
5. The claimant was temporarily totally disabled for the periods beginning May 24, 2006 through July 12, 2006, and August 24, 2006 and continuing through the end of her healing period or until such time as she has returned to work, a date to be determined.

6. Medical treatment rendered to the claimant under the care of Drs. Rebecca Barrett-Tuck, J.D. Bonner, and Demetrius Spanos, while reasonably necessary in connection with the right upper extremity injury received by the claimant, was not authorized, the claimant having received the Form AR-N on July 27, 2005.

7. Medical treatment rendered to the claimant under the care of Dr. Rebecca Barrett-Tuck relative to the claimant's left upper extremity is reasonably necessary in connection to the compensable consequence injury.

8. The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of July 27, 2005, and the compensable consequence injury of left carpal tunnel syndrome.

9. The respondent has controverted the payment of temporary total disability workers' compensation benefits relative to the claimant's right elbow, right carpal tunnel release, and left carpal tunnel release, as well as medical benefits relative to the claimant's left carpal tunnel syndrome growing out of the July 27, 2005, compensable accident.

CONCLUSIONS

On July 27, 2005, the claimant sustained an injury to her right upper extremity within the course and scope of her employment. The claimant contends that July 27, 2005, accident ultimately required medical treatment in the form of bilateral carpal tunnel release surgery and right ulnar nerve decompression. The claimant seeks corresponding temporary total and medical benefits in addition to controverted attorney fees. Respondent contends that the claimant has received the appropriate workers' compensation benefits, that the carpal tunnel release surgery is not reasonable or necessary, and that the claimant's treatment under the care of Dr. Rebecca

Barrett-Tuck is unauthorized.

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 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 caused 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 claimant performed the duties of a custodian in her employment with respondent. The claimant's job duties entailed a number of hand intensive tasks, to include use of scrubber and buffer. There is no evidence in the record to reflect that the claimant experienced any physical limitations or restrictions relative to her upper extremities prior to July 27, 2005.

The claimant presents credible testimony regarding mechanism of her July 27, 2005, accident, to include the blow to right hand, and her efforts as dislodging her hand from between the desk and the wall. Following the accident, the injury was reported to appropriate supervisory personnel and a Form AR-N was completed. Thereafter, the claimant was directed to respondent's designated medical provider. The claimant's symptoms were located in her right upper extremity following the accident. Claimant was provided medication and splint for the right upper extremity and released to one-handed light/limited job duties. The medical records

are replete with objective finding regarding the claimant's right upper extremity, to include swelling and fluid.

The claimant is right hand dominate. The claimant's medical treatment relative to her right upper extremity was provide by a family practitioner and/or a general orthopedic surgeon from July 27, 2005, through September 21, 2005. The claimant continued to perform her job duties principally using her non-dominate left hand. Following her initial visit to Dr. Michael M. Moore, pursuant to the referral of Dr. Edward Cooper, the physician status report authored by Dr. Moore reflects that the claimant would "continue current work status", which entailed discharging her job duties with her left hand. By the time the claimant underwent the electrodiagnostic testing under the directions of Dr. Rutherford on November 3, 2005, the nerve conduction study was abnormal demonstrating evidence for bilateral carpal tunnel syndrome, mild on the right and moderate on the left.

The hand intensity of the claimant's regular job duties is not disputed. Prior to her July 27, 2005, compensable accident claimant was able to perform her job duties without restrictions or limitations. After the July 27, 2005, accident, claimant continued performing her job duties using her non-dominate left hand. Indeed, the claimant performed her job duties with her non-dominate left hand due to the July 27, 2005, injury to her right upper extremity, to include the point in time after the bilateral CTS was diagnosed in November 2005.

The claimant was effectively discharged from the care of Dr. Rutherford during the April 13, 2006, visit in which he opined that she was at maximum medical improvement, declined to recommend work place restrictions or a permanent partial impairment rating. Prior to the March 27, 2006, FCE report, the diagnostic studies performed by Dr. Rutherford relative to the claimant

had resulted in findings of bilateral carpal tunnel syndrome, which was mild on the right and moderate on the left, and evidence of RSD for which the claimant had undergone four stellate ganglion blocks. It was only after the claimant had been seen by physicians outside of those designated by respondent and obtained additional diagnostic studies with continuing objective findings that she was again seen by authorized physicians at the behest of the claims adjuster. Objective medical findings are not required to find that the claimant's healing period continues. *Chambers Door Industry, Inc., v. Graham*, 59 Ark. App. 224, 956 S.W.2d 196 (1997).

The claimant was seen on May 9, 2006, by Dr. Demetrius S. Spanos, a Jonesboro neurologist, relative to her right upper extremity complaint of pain, at the request of Dr. Darrell Bonner, her primary care physician. The records of Dr. Spanos recite the presence of atrophy in the right FDI muscle when compared to the left. The chart note of Dr. Spanos reflects regarding his May 9, 2006, evaluation of the claimant:

Much of what the patient describes is consistent with carpal tunnel syndrome and this may have been aggravated by the apparent entrapment of her wrist between the dolly handle and the corner of the desk. Neurophysiologic studies will be compared to the previous ones done this past year. The patient informs me that she will be seeing Dr. Tuck in several weeks and these will be completed prior to that. (CX. #1, p. 23).

The May 10, 2006, diagnostic studies obtained under the care of Dr. Spanos disclosed moderately severe carpal tunnel syndrome of the right upper extremity and entrapment of the ulnar nerve across the elbow.(CX. #1, p. 24-25).

The claimant has sustained her burden of proof by a preponderance of the evidence that she suffered a injury to her right wrist and elbow on July 27, 2005, arising out of and in the course of her employment which required medical treatment, to include surgery, and rendered her

totally incapacitated from engaging in gainful employment from May 24, 2006 through July 12, 2006, and August 23, 2006, continuing through the end of her healing period. Following the August 24, 2006, surgical procedures on the claimant's right upper extremity she experienced and appreciable relief of the symptoms in the extremity.

When an employee sustains a compensable injury, then every natural consequence of that injury is also compensable. *Hubley v. Best Western Governor's Inn*, 52 Ark. App. 226, 916 S.W.2d 143 (1996). At issue is whether there is a causal connection between the initial injury and the alleged consequential condition. *Jeter v. B.R. McGinty Mechanical*, 62 Ark. App. 53, 968 S.W.2d 645 (1998). Consequential injuries need not arise within the time and space boundaries of the employment.

The claimant is right hand dominant and performed job duties with hand intensive rapid and repetitive tasks. Claimant presented credible testimony regarding the frequency and duration of the use of the scrubber, and buffer in maintenance of the class room floors, and hallways, as well as cleaning the tables and desks. Once the claimant sustained the injury to her right upper extremity she continued to discharge employment duties, however was limited to using her left non-dominant hand. By November 2005, claimant was experiencing symptoms in the left upper extremity which was diagnosed by EMG as moderate carpal tunnel syndrome. While, as with the right upper extremity, the claimant may have been developing carpal tunnel syndrome from work, the evidence preponderates that compensable right arm injury and reliance on the left arm in continuing discharge her job duties rapidly increased the progression on the left. According, the left carpal tunnel syndrome is a compensable consequence of to the claimant's compensable right upper extremity injury. Respondent has controverted the compensability of the claimant's

left carpal tunnel syndrome.

Ark. Code Ann. §11-9-508 (a) requires the employer to provide such medical services as may be reasonably necessary in connection with the employee's injury. *Cox v. Klipsch & Associates*, 71 Ark. App. 433, 30 S.W.3d, 764 (2000). The evidence preponderates that while the medical treatment rendered to the claimant under the care of Dr. Bonner, Dr. Spanos, and Dr. Barrett-Tuck, was reasonably necessary in connection with the claimant's compensable injury, the same was unauthorized, and as such the cost of same is not the responsibility of respondent. The claimant received the Form AR-N on July 27, 2005, following the reporting of her accident and prior to receiving medical treatment for same. While the claimant requested and received a change of physician, in accordance with Ark. Code Ann. §11-9-514, (a)(2)(A), she failed to follow through with the designated physician, but rather elected to proceed under the care of Dr. Barrett-Tuck, who was not the authorized treating physician.

AWARD

The respondent is herein ordered and directed to pay to the claimant temporary total disability benefits at the appropriated compensation benefits rate for the period beginning May 24, 2006, through July 12, 2006, and August 24, 2006, continuing through the end of the claimant's healing period or until such time as she has returned to work, a date to be determined, as a result of the July 27, 2005, compensable injury to the claimant's right upper extremity and compensable consequence to the left upper extremity. Said sums accrued shall be paid in lump without discount.

The respondent is further ordered and directed to pay all reasonably necessary related and authorized medical, hospital, nursing and other apparatus expenses growing out of the claimant's

compensable injury of July 27, 2005.

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