

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F601808**

**MELODY WILSON, EMPLOYEE**

**CLAIMANT**

**LENNOX INDUSTRIES, INC., EMPLOYER**

**RESPONDENT**

**ACE AMERICAN INSURANCE COMPANY  
c/o ESIS, INC. (TPA),  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED DECEMBER 28, 2007**

Hearing before Administrative Law Judge Barbara W. Webb on October 4, 2007, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Ms. Sheila F. Campbell, Attorney at Law, Little Rock, Arkansas.

Respondents represented by Ms. Betty J. Hardy, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held on the above-styled claim on October 4, 2007, before Administrative Law Judge Barbara W. Webb. A Pre-hearing Order was entered in this case on July 18, 2007. The Pre-hearing Order set forth the stipulations offered by the parties and outlined the issues to be litigated and resolved at this hearing. A copy of the Pre-hearing Order was made Commission's Exhibit No. 1 to the hearing record. The following stipulations as submitted by the parties in the Pre-hearing Order and as amended on the record are hereby accepted:

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

2. The employer/employee/carrier relationship existed on January 19, 2006, when claimant filed a claim for a work-related injury, for which some benefits have been paid.
3. The claimant's earnings were sufficient to entitle her to a compensation rate of \$421.00 for temporary total disability and \$316.00 for permanent partial disability benefits.
4. After her initial surgery, the claimant returned to work on August 7, 2006, and worked until July 12, 2007.

By agreement of the parties, the issues to be litigated are:

1. The compensability of claimant's alleged January 19, 2006 injury.
2. Whether the claimant is entitled to additional medical treatment and medical mileage.
3. Whether the claimant is entitled to temporary total disability benefits from July 12, 2007, until a date yet to be determined.
4. Controversion and attorney's fees.

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### **CONTENTIONS**

The claimant contends that she was injured in the course and scope of her employment, performing duties essential to her job and that she is entitled to additional temporary total disability benefits from July 12, 2007, until a date yet to be determined, medical treatment, medical expenses, mileage and attorney's fees. Alternatively, the claimant contends that her compensable injury is an aggravation of her pre-existing condition.

The respondents contend that the claimant filed a claim for a work-related injury occurring on January 19, 2006, for which some benefits were paid. After receipt of medical records from Dr. Bindra and Dr. Rhodes, respondents have controverted the compensability of the claimant's claim contending that the claimant's complaints are not causally related to her work, but instead are related to poly neuropathy from her diabetes. In the alternative, respondents assert an offset pursuant to A.C.A. § 11-9-411 if the claimant is awarded benefits during the period of time that she received short-term disability.

The record consists of a one volume transcript of the October 4, 2007, hearing, consisting of the testimony of Melody Wilson and all documentary evidence consisting of Commission's Exhibit No. 1 (Pre-hearing Order); Joint Exhibit No. 1 (Deposition of David Rhodes, M.D.); Joint Exhibit No. 2 (Deposition of Randy Bindra, M.D.); Joint Exhibit No. 3 (Abstract of Respondents' Medical Exhibit); Joint Exhibit No. 3 (Respondents' Medical Exhibit).

### **FACTUAL BACKGROUND**

Melody Wilson is 46 years old (b.d. 3/16/61). She completed the tenth grade. She began working for Lennox Industries in July of 1998 in the maintenance department working as a janitor. She changed jobs at Lennox and began working as a material handler in 2004. As a material handler, her job duties included packing motors, cordings and other materials on a cart and pushing it to the line and unpacking it. She explained that some of the motors weighed approximately 70 pounds. She testified that she used her hands a lot during the eight hour shift by

putting things on the line as well as taking things off the line. She testified that she began having problems with her wrist on January 19, 2006, as she was lifting and placing some shelves. She described the shelves as weighing about 20-30 pounds a piece. She described the incident as follows:

Q. Okay. And describe what you were trying to do with those shelves.

A. Well, have a certain slot that they sit in, and I had to put so many in there, and then I hit them to knock them back to get enough of them off in there.

Q. Okay. So you were hitting these shelves trying to get them to fit in a particular slot?

A. Yes.

Q. Okay. And then what did you experience as you were trying to hit these shelves to push them into the slot?

A. I caught the side of my hand and pain just shot down.

Q. Okay. Had you ever had that type of pain before?

A. No.

She testified that she had not had any problems in that area of her right hand previously. She testified that her hand remained swollen and that after three days, she reported the incident to her supervisor, Doug Shelton. It was then reported to the company nurse as an on-the-job accident. She filled out a claim form for workers' compensation and was referred for medical treatment to Dr. Daniel in Stuttgart, Arkansas. At the time she saw Dr. Daniel, her hand was still swollen and hurting with redness. Dr. Daniel prescribed physical therapy. After therapy failed, she was subsequently referred to Dr. David Rhodes. She testified that her hand

was still swollen and hurting. Dr. Rhodes performed surgery on her wrist and she remained off work until August 7, 2006. At the time she returned to work, she required help from her co-workers in order to complete her work duties. She explained that her hand continued to swell even after the first surgery. She worked until July 11, 2007. At that time, she underwent a subsequent surgery at U.A.M.S. performed by Dr. Bindra. She testified that she had not had any improvement since her second surgery and that her wrist remains swollen and hurting. She was referred for pain management. She testified that she had made a previous claim for carpal tunnel syndrome in 2001 and was having problems with her wrist while working at Lennox. She received medical treatment and eventually her problems resolved. She testified that following her surgery with Dr. Rhodes, she received temporary total disability benefits and was paid until she went back to work in August of 2006. She testified that she continues to go to therapy as a result of her carpal tunnel release twice a week. She testified that she could not use her right hand when she went back to work unless it was on a small object. She testified that her swelling continued even after the surgery.

On cross-examination, the claimant explained that she would load and unload carts containing motors needed for the production of heating and air conditioning units. She explained that she also would take the shelves from the stockroom and put them on her cart and push them to a storage bin where the shelves were stored for the workers that were building the units. She was treated by Dr. Michael Moore in 2001 for pain, swelling and numbness in both her right and

left hands. In January of 2006, she also reported pain and problems in her left wrist. In late 2006, she began having numbness and tingling in her legs. She testified that from August 7, 2006, until November 11, 2007, she did not use her right hand for lifting heavy objects. She did not handle the shelves nor lift the motors. She admitted that she had a family history of diabetes and that her medical records indicated that she was diabetic. She admitted that she had trouble in 2006 controlling her diabetes. She requested a change of physician from Dr. Rhodes to Dr. Bindra in October of 2006. She continued treatment with Dr. Bindra until November 20, 2006. She did not see Dr. Bindra from November 20, 2006, until May 21, 2007. She began receiving short-term disability benefits a week after she took off work in July of 2007 and continues to receive the net amount of \$196.00 a week. She remains under the care of Dr. Bindra. She went back to work in August of 2006 to full duty. She acknowledged a note from Dr. Bindra in November of 2006 indicating that she could return to full duty. She explained that she continued to have the same problems after both surgeries although she had some improvement after the second surgery. She explained that the symptoms in 2001 were not near as bad as the symptoms in 2006. She worked from 2001 until 2006 without any problems. She reported problems with her shoulder as well as her wrist in 2006. She contends that her problems with her right shoulder, upper arm, elbow and neck are also work related. She does not contend that her problems with her back are work related. She contends that she currently has pain from her wrist on her right arm to the mid-forearm. The pain in her elbow and left side has resolved. She

explained that she is right-handed. Her normal shift at Lennox was from 6:00 a.m. to 2:30 p.m. She explained that she would have breaks and the opportunity for a meal. She explained that her work was dictated from a pack list for that week. She explained that she would keep her cart loaded and that she would swap carts as one became low. She testified that she did have down time if something went down on the line or if something held them up. She explained that she cannot write because her fingers lock up and it still hurts. She can dress herself and she can drive. She cannot clean house and needs help with cooking.

The medical records in the case reflect that Melody Wilson filled out an accident report on January 26, 2006, reporting an incident on January 19, 2006, at 10:00 a.m. She reported that she injured her right thumb, wrist and elbow while pushing items on a line. She was assessed with overuse syndrome and tendinitis and prescribed a thumb splint and physical therapy. On February 6, 2006, she returned and underwent x-rays on her right hand. Dr. Daniel's notes reflect swelling over the base of the right thumb. She was assessed with the same diagnosis and was released from work for one week with physical therapy and placed in a larger brace that would support her thumb. At that time, she completed a patient information survey indicating that she had pain in her thumb and forearm with swelling which began January 19, 2006, caused by overuse/hitting shelves with her right hand. She continued with physical therapy and with follow-up visits with Dr. Daniel until February 16, 2006. At that time, she was referred to Dr. Safman.

On March 12, 2006, the claimant was evaluated by Dr. Bruce Safman. She presented with problems with her right shoulder, upper arm, elbow, wrist, thumb and neck. She reported that her problems began with an injury on January 19, 2006, when she hit her hand while working. Dr. Safman noted that the claimant's symptoms were suggestive of her symptoms back in 2001 but reported more shoulder and cervical pain. He noted that she had previously had an EMG nerve conduction, x-rays of the cervical spine and shoulder and a bone scan without significant pathology being present and reported that those symptoms had resolved. He noted that the most recent x-rays done by Dr. Daniel had apparently demonstrated no significant pathology. He noted that the symptoms of her hand were suggestive of carpal tunnel syndrome. He did trigger point injections over the medial and lateral epicondyle of the right elbow. He prescribed Lidoderm patches, Darvocet and Lyrica. He placed her under restrictions of no use of her right upper extremity. On March 27, 2006, she returned for a follow-up visit with Dr. Safman. He noted that her pain symptoms were all subjective in nature. He liberalized her work restrictions to 20 pounds lifting, increased her Lyrica to 300 mg. a day. He noted that there was no guarding or muscle spasms present in the right arm. On April 17, 2006, she returned again for a follow-up visit with Dr. Safman reporting that her pain was about the same. He noted that he would try her on Cymbalta, but that if that was not helpful, he had nothing else to offer her. He placed her on a 30 pound restriction of lifting, pushing and pulling. On April 24, 2006, she returned for follow-up evaluation by Dr. Safman. He noted that she had tried the Cymbalta but

that had noticed no change. He noted that she attempted to return to work but had swelling in her right hand and increasing pain. During his examination, he noted that there was no swelling in her hands and that she was reporting paresthesias in the ulnar nerve distribution. He noted that the patient had subjective symptoms and no objective findings on the examination. He noted that she had not responded to conservative therapy. He determined that she was at maximum medical improvement with 0% disability rating as there is no objective pathology that is evident.

On April 27, 2006, the claimant was evaluated by Dr. David Rhodes. He noted that she reported that she had hurt the palm of her hand over her thumb while she was pushing shafts at work. Following his examination, Dr. Rhodes assessed 1) rule out nerve impingement right upper extremity, 2) right lateral epicondylitis, and 3) right thumb CMC osteoarthritis. He administered a steroid injection into the right lateral epicondyle. He prescribed a wrist brace and a tennis elbow strap and prescribed Naproxen and ordered a nerve conduction study. He kept her under a work restriction at a 10 pound weight limit. On May 2, 2006, Dr. Julia McCoy performed a nerve conduction study which resulted in a diagnosis of "moderately severe right carpal tunnel syndrome only." On May 4, 2006, she returned for a follow-up evaluation with Dr. Rhodes. Dr. Rhodes noted that it was his opinion that "greater than 50% of her work is responsible for her current diagnosis of severe carpal tunnel syndrome." He recommended carpal tunnel release and continued her 10 pound weight limit to the right upper extremity. On May 19, 2006, she

underwent surgery for carpal tunnel release to her right wrist. On June 5, 2006, she returned for follow-up after carpal tunnel release surgery. Dr. Rhodes noted that she was doing well and should start therapy. He continued her work restrictions and indicated she should be able to return to work with a 10 pound weight limit to the right upper extremity in two weeks. On June 19, 2006, Dr. Rhodes noted swelling in the hand. He continued her prescription for Naproxen, began a Medrol Dosepak and prescribed a 10 pound weight limit to the right upper extremity, increasing 10 pounds per week. On July 3, 2006, Dr. Rhodes noted that the claimant presented with swelling in her hand and fingers. He noted minimal swelling. He assessed her with right median nerve decompression at the wrist with residual swelling and prescribed a steroid injection into the right carpal tunnel area and returned her to therapy. On July 17, 2006, the claimant was seen by Dr. Rhodes. He noted that she presented with complaints of decreased range of motion of her hand. He noted his physical exam of her right hand revealed no erythema or swelling present. He assessed her with status post right median nerve decompression at the wrist and noted he could not see why the patient was unable to move her fingers in her right hand. He recommended a functional capacity evaluation to the right upper extremity. From July 18, 2006 to August 1, 2006, she was treated by Paula Hooks, APN, at the Stuttgart medical clinic for problems with her diabetes. On August 7, 2006, she returned to Dr. Rhodes for evaluation following her functional capacity evaluation. He noted that she showed unreliable effort. He returned the claimant to work full duty with 0% impairment rating noting that the claimant had reached

maximum medical improvement and released her from his care. She continued to treat for her diabetes problems through October of 2006.

On October 20, 2006, she was seen by Dr. Bindra. He noted that the claimant stated her problems began on January 19, 2006, when she had a work related injury "while she was packing a motor." He noted that she began to complain of pain and numbness in her right hand and had similar symptoms in her left hand and numbness in the thumb which had been present for quite a while. He noted that she had neck pain on and off which was present for about a month prior to her injury in January of 2006. Following his examination, he assessed the claimant with bilateral upper extremity pain, worse on the right. Positive provocative test for carpal tunnel syndrome and one previous positive nerve conduction result for carpal tunnel syndrome. He noted that the patient had no response to the carpal tunnel surgery on the right hand. He noted an incomplete release of carpal tunnel, diabetic peripheral neuropathy, and pain in the right hand arising from the thumb arthritis. He noted "It is unclear how these symptoms fit into a thumb injury that was at the level of the metacarpophalangeal joint as her carpal that occurred in January 2006, her carpal tunnel symptoms were clearly present for a long time, and in 2001, she also had similar symptoms, although the nerve conduction studies were negative at that time." He recommended that the nerve conduction studies be repeated, preferably by the same doctor, to see if there had been any improvement. He suggested that the claimant continue to receive therapy and further evaluation of her right shoulder where she has impingement syndrome. On October 27, 2006,

the claimant under a nerve conduction study conducted by Dr. Julia McCoy. The impression was "Moderately severe right carpal tunnel syndrome; worse from previous study 5-2-06. Martin Gruber Anastomosis. Possible early generalized sensory motor axonal polyneuropathy (prolonged ulnar distal latency & F wave)." On November 20, 2006, she was evaluated by Dr. Bindra. He noted that she had undergone carpal tunnel surgery in May of 2006. He noted the claimant was also diabetic and might have an element of diabetic neuropathy. He noted that the 5/2/06 nerve conduction study showed moderately severe right carpal tunnel syndrome. He observed that the 10/27/06 nerve conduction study reported to show moderately severe right carpal tunnel, worse from the previous study. He noted that he told the claimant that it was very hard to differentiate between diabetic neuropathy and residual carpal tunnel syndrome in her right wrist. He observed that "Her initial work-related injury of January, 2006 caused an exacerbation of preexisting carpal tunnel syndrome. Although she did have diabetic neuropathy, at that time she did have a small significant element of carpal tunnel syndrome. Currently, she has a mixed picture. There may be some residual of carpal tunnel and diabetic neuropathy. It is difficult to differentiate between the two." He noted that she could control the pain with Neurontin but that that would be related to her diabetic neuropathy. If that did not work, he indicated she might wish to undergo surgery for right carpal tunnel release and that there was no guarantee of any success. On March 22, 2007, the claimant received an A.M.A. impairment rating to the regional hand impairment of the upper extremity of 2%, total upper extremity

of 2% and upper extremity impairment for both sides to the whole person of 1%. In a questionnaire dated March 26, 2007, Dr. Bindra indicated that the claimant had a diagnosis of right chronic median neuropathy at wrist with super imposed diabetic neuropathy. He noted the patient's work exacerbated a preexisting condition. He noted the initial problem contributed more than 50% by job related duties. He noted that he did not see the patient for initial treatment. He noted that treatment of carpal tunnel syndrome has ended and that the claimant had a hand impairment of 2% with a total impairment to the whole person of 1%. He noted that the patient would likely have residual numbness which is permanent. On May 21, 2007, she returned to Dr. Bindra complaining of continued problems with her carpal tunnel syndrome. He noted that the sensory examination confirmed she had significant loss of sensation in her median nerve distribution in her right hand and recommended that a revision release of the carpal tunnel might be beneficial. On July 12, 2007, she underwent an extended right carpal tunnel release. He noted that the claimant was advised that she might not improve and that she would not likely have a complete recovery due to her underlying diabetic neuropathy. On July 27, 2007, she returned for evaluation following surgery. Dr. Bindra noted that the claimant was doing well. He recommended that the claimant not do any repetitive work, use vibratory tools or more than 10 pounds lifting with her operated right hand for four more weeks. He noted she had normal sensory examination in her fingers and normal thenar muscle motor strength. She continued in therapy until August 20, 2007, at which time she was referred to a pain clinic.

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## **DISCUSSION**

### **A. COMPENSABILITY**

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2002). A claimant seeking workers' compensation benefits for a gradual-onset injury must prove by a preponderance of the evidence that: (1) the injury arose out of and in the course of his or her employment; (2) the injury caused internal or external physical harm to the body that required medical services or resulted in disability or death; (3) the injury was the major cause of the disability or need for treatment. Ark. Code Ann. § 11-9-102(4) (A) (ii) and (E)(ii) (Repl. 2002). Because carpal tunnel syndrome is by definition a gradual onset injury, it is not necessary that the claimant prove that this injury was caused by rapid repetitive motion. See Kildow v. Baldwin Piano & Organ, 333 Ark. 335, 969 S.W.2d 190 (1998).

After review of the evidence, I find that the claimant was a credible witness. The claimant testified that she first experienced numbness in her fingers and in 2001. She sought medical treatment and was able to adjust and continue working.

She began experiencing pain and numbness again in January of 2006. After evaluation and treatment by Dr. Safman and Dr. Rhodes, the claimant underwent carpal tunnel release surgery on her right wrist on May 19, 2006, and again on July 12, 2007, by Dr. Bindra. She improved after surgery but continues to seek treatment for swelling and redness in her hand.

The respondents contend that the testimony of Dr. Rhodes supports their contention that the claimant's post-surgical problems are attributable to other present non-work related risk factors, such as her diabetes.

The Commission has the duty to resolve conflicting medical evidence, including medical testimony. Maverick Transportation v. Buzzard, 69 Ark. App. 128 (2000). The Commission may review the basis for a doctor's opinion in determining its weight and credibility. Id; Poulan Weed Eater v. Marshall, 79 Ark. App. 129, 84 S.W.3d 878 (2002). When medical opinions conflict, the Commission may resolve the conflict based on the record as a whole and reach the result consistent with reason, justice, and common sense. Barksdale Lumber v. McAnally, 262 Ark. 379, 557 S.W.2d 868 (1977). A physician's special qualifications and whether a physician rendering an opinion ever actually examined the claimant are factors to consider in determining weight and credibility. Id.

In the present matter, I find that Dr. Rhodes 's opinions on causation are consistent with the testimony of Dr. Bindra. He did not treat the claimant after October of 2006. Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16)(B)(Repl. 1996). The Arkansas Court of Appeals has held:

the plethora of possible causes for work-related injuries includes many that can be established by a common-sense observation and deduction. To require medical proof of causation in every case appears out of line with the general policy of economy and efficiency contained within the workers' compensation law. To be sure, there will be circumstances where medical evidence will be necessary to establish that a particular injury resulted from a work-related incident - but not in every case. We find the Court of Appeal's reasoning in

*Millican* and *Tilley* persuasive. We therefore adopt the holding in *Millican* that objective medical evidence is necessary to establish the existence and extent of an injury, but is not essential to establish the causal relationship between the injury and the work-related incident (emphasis added).

Freeman v. Con-Agra Frozen Foods, 70 Ark. App. 306, 27 S.W.3d 762 (2000), quoting Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999). See Stephens Truck Lines v. Millican, 58 Ark. App. 275, 950 S.W.2d 472 (1997) and Aeroquip, Inc. v. Tilley, 59 Ark. App.163, 954 S.W.2d 305 (1997).

Based on this reasoning, Freeman, summed up the current state of the law as such:

Medical evidence is not ordinarily required to prove causation, i.e., a connection between the injury and the claimant's employment, but if an unnecessary medical opinion is offered on that issue, the opinion must be stated with a reasonable degree of medical certainty.

Freeman, supra, citing Wal-Mart Stores, Inc. v. Van Wagner, 337 Ark. 443, 990 S.W.2d 522 (1999).

The law is clear that medical opinions based upon "could", "may", "possibly", and "can" lack the definitiveness required by Ark. Code Ann. §11-9-102(16)(B)(Supp.1999) which requires that medical opinions be stated within a reasonable degree of medical certainty. Scott v. Middleton Drywall, 2005 AWCC 22 (Feb. 9, 1005) ("probably did" found insufficient to prove causation); Frances v. Gaylord Container Corporation, 341 Ark. 527, 20 S.W.3d 280 (2000) (overruling prior Court of Appeals decision and holding that "could" was insufficient to satisfy standard ); Crudup v. Regal Ware, Inc. , 341 Ark. 804, 20 S.W.3d 760 (2001) ("theoretical possibility" did not meet standard of proof); Freeman v. Con-Agra

Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001) (to pass muster, opinion must be more than speculation and go beyond possibilities).

After review of the credible evidence, I find that the preponderance of the evidence demonstrates that claimant's carpal tunnel syndrome was work-related. I would note that Dr. Bindra, the treating surgeon, did not attribute the claimant's carpal tunnel syndrome to her non-work related diabetes, but rendered an opinion that her work duties were more than a 50% contributing factor to the onset of the claimant's symptoms and exacerbated her pre-existing condition. He further observed that if her diabetic neuropathy was more significant, she would have significant symptoms on her left side. Based on the preponderance of the evidence, I find that the claimant sustained a compensable injury in the form of carpal tunnel syndrome. I find that the compensable injury caused physical harm to the claimant and arose out of and in the course of her employment. Moreover, the medical evidence is supported by objective findings, namely the carpal tunnel syndrome shown by electro-diagnostic testing. Finally, I find that the preponderance of the credible evidence proves that the compensable injury was the major cause of her disability and continuing need for treatment.

#### **B. AGGRAVATION/RECURRENCE**

In Maverick Transp. V. Buzzard, 69 Ark. App. 128, 10 S.W.3d 467 (2000), the Arkansas Court of Appeals discussed the difference between an aggravation and a recurrence as it relates to workers' compensation law. The Court stated:

An aggravation is a new injury resulting from an independent incident.  
Farmland Ins. Co. v. DuBois, 54 Ark. App. 141, 923 S.W.2d 883

(1996). A recurrence is not a new injury but merely another period of incapacitation resulting from a previous injury. Atkins Nursing Home v. Gray, 54 Ark. App. 125, 923 S.W.2d 897 (1996). A recurrence exists when the second complication is a natural and probable consequence of a prior injury. Weldon v. Pierce Bros. Constr., 54 Ark. App. 344, 925 S.W.2d 179 (1996).

Id. at 130, 10 S.W.3d at 468. An aggravation is a new injury with an independent cause and, therefore, must meet the requirements for a compensable injury. Crudup v. Regal Ware, Inc., 341 Ark. 804, 20 S.W.3d 900 (2000); Ford v. Chemipulp Process, Inc., 63 Ark. App. 260, 977 S.W.2d 5 (1998).

The test to determine whether a subsequent episode is a recurrence or an aggravation is whether the subsequent episode was a natural and probable result of the first injury or if it was precipitated by an independent intervening cause. Bearden Lumber Co. v. Bond, 7 Ark. App. 65, 644 S.W.2d 321 (1983). If there is a causal connection between the primary and the subsequent disability, there is no independent intervening cause unless the subsequent disability is triggered by activity on the part of the claimant which is unreasonable under the circumstances. Guidry v. J & R Eads Const. Co., 11 Ark. App. 219, 669 S.W.2d 483 (1984), Georgia-Pacific Corp. v. Carter, 62 Ark. App. 162, 969 S.W.2d 677 (1998), Davis v. Old Dominion Freight Line, Inc. 341 Ark. 751, 20 S.W.3d 326 (2000).

The determination of the credibility of the witnesses and the weight to be given their testimony are matters exclusively within the province of the Commission. Cooper v. Hiland Dairy, 69 Ark. App. 200, 11 S.W.3d 5 (2000).

As noted above, I have found that the claimant's carpal tunnel syndrome was work-related based on the testimony of the claimant and the corroborating

medical evidence. I further find that, in the alternative, the medical evidence offered by Dr. Bindra also supports a finding that claimant's condition was a work-related aggravation of a pre-existing condition and not the result of an idiopathic condition or intervening cause.

**C. MEDICAL EXPENSES AND TEMPORARY TOTAL DISABILITY BENEFITS**

Ark. Code Ann. § 11-9-508 states that employers must provide all medical treatment that is reasonably necessary for the treatment of a compensable injury. What constitutes reasonable and necessary treatment under the statute is a question of fact for the Commission. Ganksy v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996); Geo Specialty Chem., Inc. v. Clingan, 69 Ark. App. 369, 13 S.W.3d 218 (2000). Respondents are responsible only for medical services which are causally related to the compensable injury. Post-surgical improvement is a relevant consideration in determining whether surgery was reasonable and necessary. Winslow v. D & B Mech. Contractors, 69 Ark. App. 285, 13 S.W.3d 180 (2000). Dr. Rhodes performed the initial carpal tunnel syndrome release surgery and that Dr. Bindra performed the second carpal tunnel syndrome release surgery due to the formation of scar tissue and resulting compression. The record plainly shows post-surgical improvement both after the first and second surgical procedures.

Based on the preponderance of the credible evidence, I find that the medical services provided to the claimant beginning in January 2006, including the surgical releases of the claimant's carpal tunnel syndrome by Dr. Bindra and Dr. Rhodes, represent reasonably necessary medical services under Ark. Code Ann. § 11-9-508.

I further find that the follow-up treatment by Dr. Bindra, including his referral to the pain specialist at UAMS is reasonable and necessary treatment.

Finally, an employee who has sustained a compensable scheduled injury is to receive temporary total disability compensation during her healing period or until she returns to work. Wheeler Constr. Co. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2001). "Healing period" means "that period for healing of an injury resulting from an accident." Ark. Code Ann. § 11-9-102 (12); Ketcher Roofing Co. v. Johnson, 50 Ark. App. 63, 901 S.W.2d 25 (1995). In the instant case, Dr. Bindra has not released the claimant to return to work and has recommended additional medical treatment. Based on the preponderance of the evidence, I find that the claimant has proven that she was rendered temporarily totally disabled, as the result of the effects of her compensable injury for the period beginning July 12, 2007, and that she is entitled to temporary total disability benefits from July 12, 2007, until a date yet to be determined.

#### **D. CONTROVERSION AND ATTORNEY'S FEES**

The claimant's attorney is entitled to a maximum statutory attorney's fee on the disability benefits awarded to the claimant as a result of the findings herein, one-half of the fee to be paid by the claimant and one-half of the fee to be paid by the respondents in accordance with Ark. Code Ann. § 11-9-715 (Repl. 2002).

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

1. The employer/employee/carrier relationship existed on January 19, 2006, when claimant filed a claim for a work-related injury, for which some benefits have been paid.
2. The claimant's earnings were sufficient to entitle her to a compensation rate of \$421.00 for temporary total disability and \$316.00 for permanent partial disability benefits.
3. After her initial surgery, the claimant returned to work on August 7, 2006, and worked until July 12, 2007.
4. The claimant has proven by a preponderance of the evidence that she suffered a compensable injury, i.e. carpal tunnel syndrome, while performing employment services.
5. Claimant has proven by a preponderance of the evidence that she is entitled to temporary total disability benefits from July 12, 2007, until a date yet to be determined. However, Respondents are entitled to offset pursuant to A.C.A. § 11-9-411 if the claimant is awarded benefits during the period of time that she received short-term disability.
6. Claimant has proven by a preponderance of the evidence that the medical treatment, including the carpal tunnel release surgeries performed by Dr. Rhodes and Dr. Bindra, was reasonable and necessary and related to her compensable work-related injury. In addition, the claimant is entitled to the additional medical treatment recommended by Dr. Bindra, including medical mileage.

7. Claimant is entitled to the maximum attorney's fee on the disability benefits awarded herein, one-half to be paid by the respondents and one-half to be withheld from the claimant's award of benefits.

**AWARD**

The respondents are hereby directed and ordered to pay benefits and attorney's fees in accordance with the findings of fact and conclusions of law set forth herein.

**IT IS SO ORDERED.**

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**BARBARA WEBB**  
Administrative Law Judge