

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F406729**

**ROBBIE BOONE, EMPLOYEE**

**CLAIMANT**

**WENDY'S OLD FASHIONED HAMBURGERS,  
EMPLOYER**

**RESPONDENT**

**CHARTER OAK FIRE INSURANCE  
C/O ST. PAUL TRAVELERS,  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION FILED MAY 15, 2008**

Hearing conducted before Administrative Law Judge S. Dale Douthit in El Dorado, Union County, Arkansas.

Claimant was represented by Mr. F. Mattison Thomas, III, Attorney at Law, El Dorado, Arkansas.

The respondents were represented by Mr. Phillip Cuffman, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing in El Dorado, Arkansas, on February 19, 2008. A prehearing conference was conducted on November 26, 2007, and a Prehearing Order was filed on that same date. A copy of the Prehearing Order was marked as Commission Exhibit "1", and introduced into evidence without objection, subject to any modifications made at the full hearing.

At the full hearing, the parties agreed to the following stipulations:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The employee-employer-carrier relationship existed at all

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relevant times, including March 11, 2004.

- 3) The claimant's applicable TTD rate and PPD rate is \$146.00 per week.
- 4) All issues not addressed herein are specifically reserved.

The claimant contended at the full hearing that on March 11, 2004, while working at Wendy's Restaurant in El Dorado, Arkansas, the claimant tripped over boxes injuring multiple body parts including her back and arms.

Respondents contended at the full hearing that the claimant did not suffer a compensable injury.

The following issues were agreed to be presented for determination at the full hearing:

- 1) Whether claimant sustained compensable arm injuries as a result of her March 11, 2004, fall.
- 2) Whether claimant sustained a compensable back injury as a result of her March 11, 2004, fall.
- 3) If compensability is overcome, whether claimant is entitled to all associated medical treatment, temporary total disability benefits from March 11, 2004, through January 15, 2006, and attorney's fees.

With regard to the issues, it must be noted that at the prehearing conference the claimant only contended injuries as a result of her March 11, 2004, fall. However, at the full hearing, the claimant attempted to amend her previous contentions and agreed

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issues from the Prehearing Order entered on November 26, 2007. At the full hearing, the claimant wanted to alternatively contend that she sustained gradual onset carpal tunnel injuries as a result of her employment at Wendy's prior to March 11, 2004. Respondents objected to the alternative contention and new issue regarding gradual onset carpal tunnel being heard at the full hearing of February 19, 2008, as it was not mentioned at the prehearing conference or outlined in the Prehearing Order of November 26, 2007. Since any issues regarding gradual onset or carpal tunnel were not outlined in the Prehearing Order or talked about at the prehearing conference, this administrative law judge allowed those issues to be reserved and the parties agreed the only issues that would go forward at the February 19, 2008, hearing were the claimant's allegations of specific incident injuries to her back and arms on March 11, 2004.

THE COURT: Okay. Do you want to reserve any claims or issues that you may have regarding carpal tunnel due to –

MR. THOMAS: Due to rapid repetitive motion.

THE COURT: Incurred prior to March 11, 2004?

MR. THOMAS: Yes, sir.

THE COURT: We will agree and will put in there that that will be reserved and we will go forward today on this specific incident of her back and arms of March 11, 2004.

MR. THOMAS: Yes, sir.

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THE COURT: Reserve the rapid repetitive allegation for carpal tunnel. Does that work for you, Mr. Cuffman?

MR. CUFFMAN: That will be fine.

(T. pp. 9-10, lines 16-25 & 1-5).

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the claimant and to observe her demeanor, the following findings of fact and conclusions of law are hereby made in accordance with A.C.A.

§ 11-9-704:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
- 2) The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
- 3) The claimant has failed to prove by a preponderance of the evidence that she sustained a specific incident back injury on March 11, 2004, which arose out of and in the course of her employment.
- 4) The claimant has failed to prove by a preponderance of the evidence that she sustained specific incident bilateral arm injuries while performing her job duties on March 11, 2004, which arose out of and in the course of her employment.

**DISCUSSION**

The claimant testified that she began working for Wendy's in El Dorado, in July of 2002. The claimant testified as follows regarding the events that lead to her alleged compensable injuries on March 11, 2004:

A     Okay. I had to chop a pan about this long full of hamburger meat, done meat, for chili. You chop that by hand. I did that, I covered it, and I went to the walk-in. So I'm assuming that the vacuum that that freezer door made when I pulled it open – I was standing, looking for a place to put it on a shelf, and something started pushing me in the back of the head. I sort of leaned back and then it just fell and when it hit me, I fell face first and I was gripping that pan so that I wouldn't drop it. Then, when I laid there twenty minutes and didn't nobody never come to get me, I thought I was going to freeze in there so I finally got up.

(T. pg. 19-20, lines 23-25 & 1-10).

The claimant testified that after her fall on March 11, 2004, both her knees were skinned and swollen and her elbows were skinned. The claimant also testified that her hands were "all tore up" and that her neck and back was hurting. The claimant testified that after about a week or a week and a half she started losing sensation in her left leg and decided to see Dr. Ezell. (T. pg. 21, lines 18-21). The claimant also testified that around that same time her arms were going numb.

The claimant testified that after the incident where she fell on March 11, 2004, she reported the incident to her manager. The claimant testified that she continued to work for the next week doing her normal work duties.

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Q And a week later, did you continue working for that next week?

A Yes.

Q Were you able to do everything you were asked to do? Physically were you able to do those things?

A I did.

Q Were you able to do it the same way or with the same – in the same manner as you were before the box fell on you?

A As I said, I did it.

(T. pg. 23, lines 3-12).

The medical records indicate that following the claimant's alleged incident on March 11, 2004, she treated with Drs. Ezell, Smart, Alfonso, and Vora. The medical records indicate the claimant first saw a doctor following her March 11, 2004, fall on March 18, 2004. Dr. Ezell's report contained at page 4 of Claimant's Exhibit No. 1 shows that the claimant came in March 18, 2004, "Comes in complaining of pain in her neck and back and leg. She is having numbness in her hand." Dr. Ezell's report from March 18, 2004, also indicates that claimant stated her injury was caused by a box of frozen french fries striking her in the back.

Following the claimant's alleged March 11, 2004, fall, the claimant underwent an MRI of her lumbar spine on June 29, 2004, which showed a posterocentral disc bulging at L5-S1, as stated in Claimant's Exhibit No. 1, page 14. In October of 2005,

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the claimant underwent a revision left carpal tunnel release, and in December of 2005, the claimant underwent a revision right carpal tunnel release surgery.

The claimant also testified at the full hearing that she had undergone three back surgeries prior to the alleged fall on March 11, 2004. The medical records also indicate that the claimant had a diagnosis of bilateral carpal tunnel syndrome prior to her March 11, 2004, alleged fall. In fact, the medical records indicate that the claimant underwent left carpal tunnel syndrome repair surgery by Dr. Bryant in 2003. The medical records also indicate that Dr. Bryant recommended a right carpal tunnel release on March 25, 2003; however, the claimant declined to have surgery as recommended by Dr. Bryant in 2003.

**ADJUDICATION**

The claimant's testimony and the medical records indicate that the claimant first began experiencing carpal tunnel type symptoms in 2002. It is unfortunate that it has taken nearly six years since the claimant's initial carpal tunnel complaints to be adjudicated on compensability. It is even more unfortunate that at the prehearing conference in this matter, claimant's contentions solely addressed injuries to the claimant's arms and back arising out of the claimant's alleged fall by specific incident on March 11, 2004. Even though the Prehearing Order was filed on November 26, 2007, which stated the claimant's contentions that her injuries occurred on March 11,

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2004, it was not until the date of the full hearing that the claimant made an alternative contention of gradual onset carpal tunnel injuries which occurred prior to March 11, 2004. Since the gradual onset/carpal tunnel issue/contention was not made until the date of the full hearing, that issue was specifically reserved. Therefore, I must only address the issues the parties agreed to hear at the prehearing conference and outlined in the Prehearing Order contained as Commission Exhibit No. 1, herein.

The claimant contends that she suffered compensable injuries to her arms and back while working for the respondent on March 11, 2004. The claimant's claim at this time, is for injuries which were caused by a specific incident and are identifiable by time and place of occurrence. The Commission has stated in Henry Weaver v. Precision Packaging, Full Commission Opinion filed February 2, 1995 (E400880), that pursuant to Act 796 of 1993 the following must be shown in order to establish the compensability of an injury occurring after July 1, 1993:

- (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment;
- (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death;
- (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. § 11-9-102(16), establishing the injury;
- (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of

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occurrence.

With regard to the claimant's back, an MRI of the claimant's lumbar spine conducted on June 29, 2004, and contained at page 14 of Claimant's Exhibit No. 1, shows that the claimant has a posterocentral disc bulge at L5-S1. As stated above, the claimant has a long history of preexisting back problems, as well as three prior back surgeries. A CT of the lumbar spine conducted on October 19, 1999, reveals that the claimant had a disc herniation at L5-S1 well before the claimant's alleged fall of March 11, 2004. (R. Ex. 1, pg. 8). The medical report from the CT lumbar spine of October 19, 1999, states, "At L5-S1, there is fairly good evidence of a central and left sided disc herniation that may be responsible for her symptoms." The CT from October 19, 1999, goes on to state, "There is evidence of prior discotomy and degenerative disc disease at L4-5. . . ."

It is clear to this examiner that the objective finding of a disc protrusion at L5-S1 and the claimant's 2004 lumbar MRI preexisted her alleged fall on March 11, 2004. The medical records show that the claimant has a long history of back problems, as well as objective findings of a disc herniation at L5-S1 prior to March 11, 2004. As a result, I find that the claimant has failed to prove by a preponderance of the evidence that her back injury arose out of and in the course of her employment with Wendy's on March 11, 2004.

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The claimant contended at the prehearing conference that she sustained injuries to her arms while working at Wendy's on March 11, 2004. Clearly, the claimant has bilateral carpal tunnel syndrome. It is also clear that the claimant had bilateral carpal tunnel syndrome well prior to March 11, 2004. The medical records show that the claimant had left carpal tunnel release surgery prior to March 11, 2004, and had a recommendation of right carpal tunnel release surgery prior to March 11, 2004.

Following the claimant's alleged fall on March 11, 2004, she did have continued complaints of pain, numbness, swelling, etcetera, regarding her upper extremities; however, the claimant had all those symptoms shortly before her alleged fall on March 11, 2004.

Even the claimant's own testimony reveals that she was having carpal tunnel symptoms and problems with her upper extremities directly before her alleged fall on March 11, 2004:

Q So you kept doing the same work?

A If I wanted to get paid, I had to.

Q And you kept using both hands?

A Right, chopping a hundred pounds of lettuce.

Q And kept having problems with both hands?

A That's right.

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Q But you still did your work?

A That's right.

Q And the problems persisted even up until this fall on March 11, 2004?

A Right.

(T. pg. 43, lines 11-21).

The evidence shows that the claimant had gradual onset carpal tunnel injuries dating back as early as 2002, and that her carpal tunnel symptoms persisted up through March 11, 2004. It cannot be said that claimant's arm problems were aggravated by her March 11, 2004, fall when her own testimony reveals she was having problems right up to the date of the alleged fall. However, the issue currently before the Commission is whether the claimant's arm injuries arose out of and during the course of her employment on March 11, 2004. Since the issue currently before the Commission is whether the claimant's bilateral arm injuries arose out of and during the course of her employment with Wendy's on March 11, 2004, I must find that the claimant has failed to prove by a preponderance of the evidence that her bilateral upper extremity injuries arose out of and in the course of her employment with Wendy's by specific incident on March 11, 2004.

**ORDER**

The claimant has failed to prove by a preponderance of the evidence that her

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bilateral upper extremity injuries arose out of and in the course of her employment with Wendy's on March 11, 2004. The claimant has also failed to prove by a preponderance of the evidence that she sustained a compensable back injury which arose out of and in the course of her employment with Wendy's on March 11, 2004. Therefore, this claim for benefits is respectfully denied and dismissed.

**IT IS SO ORDERED.**

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**S. DALE DOUTHIT**  
**Administrative Law Judge**

SDD/pjb