

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NOS. F310983 & F706762

PHYLLIS BRIDGES, EMPLOYEE

CLAIMANT

**TYSON POULTRY, INC.,
SELF-INSURED EMPLOYER**

RESPONDENT

OPINION FILED JUNE 18, 2008

Hearing before Administrative Law Judge Barbara W. Webb on March 20, 2008, in Pine Bluff, Jefferson County, Arkansas.

Claimant represented by Mr. Jesse L. Kearney, Attorney at Law, Pine Bluff, Arkansas.

Respondents represented by Mr. Kenneth E. Buckner, Attorney at Law, Pine Bluff, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the above-styled claim on March 20, 2008, before Administrative Law Judge Barbara W. Webb. A Pre-hearing Order was entered in this case on February 1, 2008. 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 relationship existed on or about January 3, 2003, when claimant sustained a compensable bilateral carpal tunnel injury to both hands and wrists.
3. The claimant's earnings were sufficient to entitle her to a compensation rate of \$217.00 for temporary total disability and \$163.00 for permanent partial disability benefits. The claimant's average weekly wage was \$326.00.
4. Respondents have paid temporary total disability benefits and permanent partial indemnity benefits based on the 5% impairment rating to each wrist.

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

1. Claimant's entitlement to a change of physician.
2. Claimant's entitlement to additional medical treatment.
3. Claimant's entitlement to additional temporary total disability benefits.
4. Controversion and attorney's fees.
5. Claimant reserves all other issues, including claimant's entitlement to additional permanent partial disability benefits.

The record consists of a one volume transcript of the March 20, 2008, hearing, consisting of the testimony of Phyllis Bridges and all documentary evidence consisting of Commission's Exhibit No. 1 (Pre-hearing Order); Claimant's Exhibit No. 1 (Medical and Non-medical records); and Respondent's Exhibit No. 1 (Non-medical records).

FACTUAL BACKGROUND

Phyllis Bridges is forty-three (b.d. 7/30/64). She completed high school and received her high school diploma. She testified that she had good reading and writing skills. She began working for Tyson Poultry on September 12, 1997, and continued working for them until February 20, 2007, when she was placed on disability. She initially worked as a live hanger. This job involved catching live birds and hanging approximately 60 birds per minute in a shackle. She bid on a different job and worked as a draw hand until 2002. Her job duties involved removing the viscerals from cleaned dead birds. She explained that the line moved ninety-one birds per minute and she handled every third shackle, resulting in one bird per second. She was then assigned to be a floater, which involves numerous different job duties such as rehangng, cutting, inspecting, cleaning, and pulling gizzards and livers, all of which require repetitive work with the hands along with grasping and pulling. In 2003, she was reassigned to Jefferson Parkway and worked as a packer inside a freezer packing meat patties into a bag by hand. She also worked as a box labeler which involved putting approximately 2000 labels per day on boxes.

She testified that she began having problems with her wrist in 1998. She reported that her fingers were going numb, hurting and swelling to her supervisor and the company nurse. In response, the nurse gave her a pain pill, wrapped her wrist, and sent her back to work. In September of 1999, after continuing problems with her wrists, she requested to see a doctor. She was seen by Dr. Lytle and eventually underwent carpal tunnel release surgery on both wrists. She testified

that she initially had some relief from the surgery but the problems reoccurred when she went back to work. When her problems returned, she testified that she reported the problems and she was given pain pills, her wrists were wrapped, and she was sent back to work. She requested medical treatment and was sent to Dr. Gullett. He performed a trigger thumb release on her right hand. She testified that she was sent back to work the next day. After the surgery, she was able to bend her thumb. She testified that she requested to see another doctor because she continued to swell and hurt. She returned to Dr. Gullett, who informed her that there was nothing else he could do.

She contacted the company nurse and requested a second medical opinion. The nurse eventually brought her a paper and told her that they were sending her to Dr. Rhodes. Bridges testified that she did not know or ask for Dr. Rhodes. Bridges testified that she did not know what the paper meant and that she did not know that she had a right to a change of physician. She signed the paper and went to see Dr. Rhodes in late 2003. Dr. Rhodes performed carpal tunnel surgery on her left hand. She returned to work the next day. She continued to complain of problems to her employer. She continued to see Dr. Rhodes when she complained until he said there was nothing more he could do. At that point, she was sent to Dr. Moore and subsequently referred to Dr. Rutherford. Dr. Rutherford evaluated the claimant and performed a nerve conduction study. He diagnosed her with severe carpal tunnel, but he released her from treatment based on his determination that there was nothing else he could do. He also sent her for a functional capacity

evaluation. Bridges testified that she gave her best efforts during the evaluation, although the report indicated that she did not give her full effort. She explained that Dr. Rutherford recommended that she retake the test, but the insurance carrier denied it. She went back to see Dr. Gullett and was referred to Dr. Verma who performed another nerve conduction test. She returned to Dr. Rutherford but was told that there was nothing else that could be done. She continued to complain to her employer. When she complained, she would be given a pain pill, her wrist wrapped, and she would be sent back to work. She testified that Dr. Rutherford eventually refused to see her and told her he was not able to do anything to help. She next sought treatment with Dr. Marc Stevens. Stevens gave her an injection and determined that she still had carpal tunnel. He performed carpal tunnel surgery on both left and right hands. She was ultimately referred to Dr. Walker. Walker referred her to a rheumatologist, Dr. Alsebai. Dr. Alsebai examined her and determined that she was unable to return back to work at Tyson.

She testified that during the course of her medical treatment, she continued to work and was given work releases only from Dr. Stevens and Walker. She is currently under the care of Dr. Anthony Gordon, her primary care physician. Dr. Gordon referred her to Dr. Beasley, a neurologist. Dr. Beasley recommended that she undergo a third nerve conduction test.

Bridges testified that her problems have continued to get worse. She has difficulty cooking, cleaning, vacuuming, washing dishes, and doing yard work. She explained that her hands are swollen and hurt all the time, making it difficult to use

them. She said the swelling was worse when she was working. She explained that all of her doctors had been chosen by Tyson, except Stevens and Walker. She requested that either Dr. Walker, Dr. Gordon, or another independent doctor be appointed as her treating physician.

Bridges testified that prior to Tyson, she had worked as a cook at a retirement home which involved heavy lifting and sewed at a shoe factory which involved the use of her hands. She testified that she could not perform those type jobs but wanted to work. She explained that she would like to be trained to be a social worker or a receptionist. She was terminated by Tyson on February 25, 2007, because of medical restrictions, and did not believe she could perform any of the jobs at Tyson because of the repetitive work.

On cross-examination, she admitted that she signed a Form N on 10/16/03 requesting a change of physician and did not voice any complaints about changing to Dr. Rhodes. She testified that she did not read the change of physician form. She explained that she scanned and signed the document because she was told to sign it by the nurse. She testified that she did not know that it was her choice to choose the doctor. She acknowledged the Order dated October 30, 2003, from Pat Capps Hannah with the Workers' Compensation Commission that granted her request to change to Dr. Rhodes, but did not recall receiving it.

She admitted that Dr. Walker essentially agreed that everything had been done and that he could not do anything else for her. She has not worked since February 20, 2007. She testified that she had treated with Dr. Stevens, Dr. Gordon,

and Dr. Walker on her own. She is currently on long-term disability from Tyson. She received \$1,028.00. She is currently appealing the second denial of her social security application. She explained that her group health insurance expired in August of 2007 and she paid out-of-pocket for her medical treatment by Dr. Gordon and Dr. Beasley. She testified that she currently takes Nortriptyline three times daily for depression and pain. She takes Prilosec for ulcers. She has not talked with Tyson about vocational training. She testified that she had not sought vocational training on her own or have a plan of rehabilitation to submit.

In lieu of testimony by Kimberly Culclager, the parties stipulated that she was the claimant's daughter and that her testimony would be consistent with the testimony of the claimant regarding her activities, abilities, and medical treatment. In addition, the parties stipulated that she would testify that her mother was an active care-giver for the home and took care of the home up until she developed these problems, that these problems prevented her from being the kind of mother, that they have graduated over the years, and that she doesn't currently do any work around the house.

The medical records reflect that the claimant was diagnosed with bilateral carpal tunnel syndrome aggravated by work on September 30, 1999, by Dr. Lytle. She was placed in splints with restricted duty at work for a period of 4-6 weeks. Dr. Lytle's records reflect that after conservative treatment failed, he performed carpal tunnel release surgery on the claimant's left wrist on November 19, 1999. After ten days, she reported that the pain and numbness in her hand was gone and she was

anxious to have surgery on her right wrist in light of the results on her left. On December 3, 1999, Dr. Lytle performed a carpal tunnel release on her right wrist. She returned for follow-up after ten days. She reported better sensation and control in her right wrist, but that her left wrist was sore because she had been lifting and using it a lot. He ordered the claimant to limit the use of both hands, 2 lbs on the right and 10 lbs on the left. A clinic note dated January 19, 2000, reflects that the claimant returned for a follow-up evaluation. It is noted that there were no symptoms that are attributable to carpal tunnel, only tenderness due to the scars. He released her to return to work on full active duty advising her to protect the scars. On February 14, 2000, she returned to Dr. Lytle. Clinic notes reflect that the claimant had "excellent ROM. They are still somewhat tender, but the symptoms are resolved". He returned the claimant to work full active duty with no restrictions. He further opined "According to the 'Guides to the Evaluation of Permanent Impairment,' I see no long term impairment from this injury."

On January 28, 2003, the claimant presented for treatment with Dr. Lester Alexander complaining of pain in both hands and wrists which had been bothering her for two to three weeks. X-rays of the wrists and other tests were negative. She was diagnosed with overuse syndrome of both wrists. She was placed in splints to wear when sleeping and directed not to do any repetitive work with either hand for the next two weeks. On February 4, 2003, the claimant was evaluated by Dr. Gullett with complaints of similar pain to her previous problems but with pain more in the right thumb which she compared to an electric shock. She was diagnosed with right

trigger thumb and possible recurrent carpal tunnel syndrome. He gave her a trigger thumb injection into the right thumb. He kept her at regular duty and directed her to return in one week. On February 13, 2003, she returned for a follow-up evaluation and reported "That injection helped. I'm doing good." She was able to flex and extend her thumb with no triggering. He returned her to regular duty and released her from treatment with no permanent impairment.

On June 16, 2003, she returned to Dr. Gullett with complaints of pain in her right thumb again. He noted that she had constant recurring triggering and pain. He scheduled her for trigger thumb release surgery noting that he told her that if she returned to full use of her thumb it may still give her some problems in the future and that she will need to be careful with what she does. On June 24, 2003, she underwent right trigger thumb release surgery by Dr. Gullett. On June 27, 2003, clinic notes reflect that she returned for a dressing change and that she was doing well. She returned on July 3, 2003, for suture removal. She was placed on Vioxx and kept at limited duty with no use of the right thumb for two weeks. On July 21, 2003, she returned for follow-up post-op one month. She reported that her thumb was still sore. She is "Doing OK" but not able to return to her regular job due to tenderness. He kept her on Vioxx and at limited duty until August 4, 2003, and scheduled for a follow-up visit. She returned to Dr. Gullett on August 4, 2003, with good flexion but complaints of "this is still sore sometimes". He kept her on limited duty for one week and noted that she would be returned to regular duty on August 18, 2003. He released her from treatment and noted no significant amount of

permanent physical impairment. On August 22, 2003, she returned to Dr. Gullett with complaints that the work is making her thumb hurt and swell. He fitted her for a short arm splint with a thumb spica and told her to return on an as-needed basis. Clinic notes from Dr. Gullett reflect that on August 29, 2003, his office was contacted by Paula of Tyson requesting that the claimant have physical therapy and noting that Bridges was having a hard time with her job with the splint since she uses scissors and pulls guts. He agreed and ordered physical therapy.

On October 22, 2003, Bridges presented to Dr. David Rhodes with complaints of bilateral arm pain, moderate for the past two years. His report reflects that the x-rays of both hands were unremarkable. He assessed her with bilateral forearm tendinitis with left lateral epicondylitis. He offered her a steroid injection into the left epicondyle, but she told him that it was not painful enough to get the injection. He prescribed Vioxx and instructed her on icing, stretching, and gave her bilateral upper extremity tendinitis braces. He released her to full duty work and advised her to return for the injection if the pain did not improve or worsened. On November 18, 2003, Dr. Rhodes advised the claims adjuster by letter that the claimant had reached MMI with 0% impairment rating with no permanent disability. He noted that he returned her to work without a steroid injection at the request of the claimant. On December 10, 2003, Bridges was evaluated by Dr. Rhodes with complaints that she continued to have numbness in her bilateral extremities. He noted that she reported having a right carpal tunnel release in August of 2001 and a left carpal tunnel release in July of 2001 with no improvement from the numbness

and tingling. She was diagnosed with possible chronic bilateral carpal tunnel syndrom and early left radial tunnel and lateral epicondylitis. He advised her to wear her carpal tunnel braces and instructed her to take over the counter Motrin. She scheduled her for a bilateral nerve conduction study and returned her to full duty work. On December 12, 2003, she underwent a nerve conduction study performed by Dr. Verma. The study reflected findings of clinical and electrodiagnostic evidence of severe carpal tunnel syndrome both upper extremities and no electrodiagnostic evidence of radial syndrome left upper extremity. On December 30, 2003, she returned to Dr. Rhodes for follow-up. Clinic notes reflect that he recommended extended approach and flexor tenosynovectomy in light of worsening symptoms and failed initial surgery. He noted that he explained that the goal was complete sensation return and a 0% impairment but if there was permanent damage at this point this may not return. On January 28, 2004, Dr. Rhodes performed a surgical left flexor tenosynovectomy on Bridges. She was discharged with pain medication and scheduled to return in 10-14 days. On February 11, 2004, she presented for post-op follow-up with report of no change in her symptoms. Dr. Rhodes ordered her to undergo occupational therapy and to continue no use of the left upper extremity. She was placed on limited duty with no use of her left arm until February 25, 2004. On February 25, 2004, Bridges presented for follow-up with Dr. Rhodes. He noted that her sensation was intact and she had full range of motion and was doing well. He released her to full duty work noting that she had reached MMI with 0% impairment rating. On March 4,

2004, she returned to Dr. Rhodes with complaints of discomfort in the left hand. He told her that it was normal to have discomfort for a few months after surgery but recommended surgery on her right side when the pain on the left side resolved. He returned her to work full duty. On May 12, 2004, she was examined by Dr. Rhodes. At that time she reported pain in bilateral hands with range of motion, but denies numbness or tingling and any history of arthritis process. He diagnosed her with bilateral tenosynovitis which was not work-related. She returned her to work on a full time basis. On November 24, 2004, Bridges returned to Dr. Rhodes with complaints of increasing pain with bilateral deQuervain's syndrome aggravated when she lifts at work. Noting the failed conservative treatment and continuing symptoms, he recommended deQuervain's release. He released her to return to work with a 20-pound weight restriction pending surgery.

On December 14, 2004, Bridges underwent an independent medical evaluation conducted by Dr. Michael Moore. His examination revealed:

It is my opinion Ms. Bridges' clinical history and physical examination are consistent with chronic bilateral hand and arm pain. Her physical examination did not strongly suggest a recurrent or persistent bilateral carpal tunnel syndrome. The examination did suggest a possible right deQuervain's syndrome.

He recommended a diagnostic injection into the right wrist and noted that if the injection did not provide her significant relief, it was unlikely she would benefit from surgery. He further opined that she would not be a surgical candidate unless an objective study could reasonable explain her persistent hand and arm pain symptoms and referred her to Dr. Reginald Rutherford for a nerve conduction and

EMG study. On December 14, 2004, Bridges was evaluated by Dr. Rutherford who conducted a nerve conduction and EMG study. Following his examination and testing, Dr. Rutherford opined:

The nerve conduction study demonstrates evidence for mild carpal tunnel syndrome both upper extremities. Present study is improved from the study in December, 2003. There is no role for consideration of revision surgery which is not recommended. Triphasic bone scan both upper extremities, special attention directed to the hands, is recommended. This is to ensure that there is no evidence for mild RSD based upon the hypersensitivity demonstrated on examination. If negative, Ms. Bridges should be treated with Neurontin 300 mg three times per day for her present pain complaints. It is also recommended if bone scan is negative that arrangements be made for an FCE with Rick Byrd. This will serve to define work place restrictions if she generates a valid study.

On February 4, 2005, Bridges underwent a functional capacity evaluation. The report noted that Bridges gave an unreliable and inconsistent effort with inappropriate illness response. The evaluator concluded that she demonstrated the ability to perform work at least at the light classification for an 8 hour day. A clinic note from Dr. Rutherford dated February 8, 2005, notes that the claimant gave unreliable and inconsistent effort in an FCE. He opines that the claimant is at maximum medical improvement and that no further investigation or treatment was recommended. He recommended an impairment rating of 5% to each hand and no recommended work place restriction.

On August 4, 2005, the claimant was seen by Dr. Rutherford with complaints of increasing numbness and pain in her hands. He noted that the prior testing showed mild residual abnormality median nerve referable to carpal tunnel syndrome and release. He further noted unreliable and inconsistent effort by the claimant on

her FCE. He opined that it is was probable that psychosocial factors are influencing her subjective complaints. He recommended that she undergo current electrodiagnostic testing to ascertain any objective changes. He opined that she could continue to work without restriction.

On August 11, 2005, she was referred to Dr. Verma for evaluation by Dr. Gordon. She was diagnosed with:

- 1) chronic pain syndrome
- 2) clinical signs and symptoms of bilateral carpal tunnel syndrome
- 3) tenosynovitis both upper extremities to rule out autoimmune connective tissue disorder
- 4) symptoms of C6 radiculopathy both sides
- 5) anemia
- 6) polyneuropathy

He recommended blood work and lab testing and an MRI of the cervical spine. He prescribed pain medication and Cymbalta and recommended a one month follow-up. On August 15, 2005, she returned to Dr. Rutherford for a repeat nerve conduction study and EMG. He noted that she continued to demonstrate evidence of bilateral carpal tunnel syndrome. He noted that changes were mild and there was no interval change with respect to the right median nerve. He noted slight worsening of the left median nerve. He observed there was nothing identified to promote revision surgery. He noted that some of her symptoms were not attributable to carpal tunnel, such as swelling of the hands and observed that she may have co-morbid tendonitis. He scheduled a triphasic bone scan and noted that she could continue to work regular work duties without alteration or modification. On September 13, 2005, she returned for a follow-up with Dr. Verma. She reported

no improvement in her pain, numbness, and tingling in her upper extremities. He noted that she had not been able to get her prescription filled for Cymbalta and Ultracet for lack of funds. He noted that she did not complete the lab studies and MRI of the cervical spine. He diagnosed her with 1) polymyalgia/polyarthralgia, 2) anemia, 3) chronic pain syndrome, and 4) polyneuropathy (?). He provided her samples of Ultracet and Cymbalta. He recommended nerve conduction studies of both upper extremities and lab work. On September 19, 2005, she underwent nerve conduction studies performed by Dr. Verma. He noted that the lab studies were found to be unremarkable. The nerve conduction study revealed "Electrodiagnostic evidence of severe carpal tunnel syndrome both upper extremities with no change since last study December 2003 prior to her second carpal tunnel surgery for both hands". He recommended a hand surgery consultation and made an appointment for her to see a surgeon at UAMS for October 3, 2005.

On October 31, 2005, the claimant returned to Dr. Rutherford for follow-up. He noted that she had not yet had the repeat triphasic bone scan of both hands. He scheduled the bone scan pending approval. He noted that she could continue to work regular duties without change. On November 22, 2005, the claimant underwent a triple-phase bone scan of hands and wrists conducted by James McDonald at St. Vincent Hospital. A clinic note of Dr. Rutherford of the same date reflects that the bone scan was normal and no further diagnostic testing was

required. He noted that Bridges could continue to work regular duties without restriction and that further follow-up was not necessary and not scheduled.

On February 7, 2006, the claimant returned to Dr. Verma. His clinic notes reflect that Bridges had completed her follow up visit with Dr. Bindra at UAMS and no surgical intervention was recommended. She continued to complain of severe pain and discomfort associated with numbness and tingling with her hands, mild neck pain, and constant pain and discomfort of her left shoulder with difficulty in lying on the left side. He diagnosed her with clinical signs and symptoms and electrodiagnostic evidence of severe carpal tunnel syndrome of both upper extremities and acute shoulder pain with signs and symptoms of subdeltoid bursitis and scapulothoracic muscular strain on the left side. He ordered her to discontinue use of Celebrex and started her on Mobic and Balacet for pain in order to continue her current job at Tyson. He gave her a local injection with instant improvement in her shoulder pain and mild to moderate improvement in her left upper back. On March 10, 2006, she returned to Dr. Verma. She continued to report numbness and tingling in both hands. She reported some relief from the Mobic with no significant change. He noted she was presently using a wrist splint occasionally and using Balacet at nighttime due to drowsiness. He diagnosed her with 1) chronic pain syndrome related to bilateral carpal tunnel syndrome, 2) tenosynovitis both wrists, and 3) reflux symptoms with use of Mobic. He changed her prescriptions and provided her samples. He order physical therapy and scheduled a one month follow-up visit. On May 5, 2006, she returned for follow-up with Dr. Verma. She

reported some improvement in her wrist pain, but continued to report numbness and tingling. She also reports numbness and tingling in her feet. He noted that previous lab tests ruled out diabetes. He continued her on Durbac and Cymbalta. On September 21, 2006, Dr. Verma's notes reflect that Bridges returned for evaluation. He noted mild edema in both hands and improvement in signs and symptoms of carpal tunnel syndrome. He diagnosed her with "1) chronic hand pain, 2) bilateral c.t.s, 3) tenosynovitis both wrist, 4) rsd?". He continued prescriptions of Lyrica and pain medication.

On December 18, 2006, the claimant returned to Dr. Rutherford for another nerve conduction study and EMG. The results of this study continued to demonstrate bilateral carpal tunnel syndrome with mild changes. He notes that the findings represent residua from prior carpal tunnel surgery and that further surgery is not recommended. He also notes that the impairment rating has been addressed and that nothing further is required for investigation or treatment. In his report, Dr Rutherford states that Bridges may continue to work regular duties without restriction and that further follow-up is not required.

On January 9, 2007, the claimant sought medical treatment from Dr. Marc Stevens with continuing complaints of pain and numbness in her wrists, thumb and index finger. He diagnosed her with carpal tunnel syndrome and treated her with a series of injections. On February 6, 2007, after partial relief from the injections, she was scheduled for carpal tunnel release of the right side. On February 21, 2007, she underwent a right carpal tunnel release performed by Dr. Stevens. He

released her to return to light duty on April 10, 2007. On April 19, 2007, Stevens performed a left carpal tunnel release surgical procedure on the claimant and continued her restrictions until April 23, 2007. On May 1, 2007, he continued her restrictions and noted that she should be able to return to full duty in six weeks. On June 13, 2007, Stevens referred the claimant to a rheumatologist in light of new complaints of multiple joint involvement and returned the claimant to light duty for one month. On July 5, 2007, she was seen by Dr. Walker for continuation of post-op recovery with complaints of continuing bilateral hand numbness and pain. He did not recommend surgery and agreed with the referral to a rheumatologist. Medical records reflect that on July 5, 2007, Dr. Walker prescribed occupational therapy from July 13, 2007, until August 9, 2007. Dr. Walker signed a work slip taking her off work from July 5, 2007 until August 6, 2007.

On July 31, 2007, Bridges was examined by Dr. Alsebai, a rheumatologist. He indicated that her symptoms were most likely consistent with peripheral neuropathy and noted that he did not see any evidence of arthritis or connective tissue disease. He further noted that he would not exclude the possibility of chronic pain syndrome. He referred her back to her neurologist, Dr. Verma. She was encouraged to avoid cold environments and repetitive movements indicating that it was doubtful she would be able to return to her job.

On August 27, 2007, the claimant returned for treatment to Dr. Walker. He signed a work slip taking the claimant off work from 8/27/07 until 10/9/07. In his deposition, Dr. Walker testified that he only saw the claimant twice and that this was

the last time he saw the claimant. Dr. Walker testified that he had taken over the post-op care of the claimant after Dr. Stevens moved out of state. He explained that on August 27, 2007, she had finished her post-op recovery period and reached maximum medical improvement. He testified that he had offered her all there was to offer and did not have any further treatment to offer her. He explained that he signed the work slip based on her subjective complaints of continued pain.

DISCUSSION

The claimant contends she sustained bilateral carpal tunnel syndrome, that her condition has not healed and has continuously recurred or aggravated. The claimant contends that she required ongoing medical treatment and surgical intervention, was temporarily totally disabled and is entitled to a permanent impairment rating. Before the rating can be established, claimant contends she is entitled to a change of physician to obtain an independent, objective evaluation of the claimant's medical condition, provide treatment as needed, and ultimately determine when the claimant has reached maximum medical improvement and assign a permanent disability rating. The claimant contends she is entitled to education and rehabilitation and for disfigurement. The claimant further contends the respondents have controverted this claim and are liable for temporary total disability benefits, medical and drug benefits, and permanent impairment benefits, as well as attorney's fees and costs.

The respondents contend that the claimant sustained injuries to both of her hands and wrists arising out of and in the course of her employment on or about

January 3, 2003; that the respondents accepted the claim as compensable and provided medical treatment by and at the behest of her authorized treating physicians/referred physicians, Dr. Gullett, Dr. Rhodes, Dr. Verma, Dr. Bindra, and Dr. Rutherford. The respondents contend that claimant requested a change of physician on October 16, 2003, and that the Commission approved the change on October 30, 2003, to Dr. Rhodes. Therefore, the claimant is not entitled to another change of physician. The respondents contend that additional treatment has not been refused and that claimant may return to the authorized treating physician if additional treatment is reasonable and necessary. The respondents contend that the claimant underwent a functional capacity evaluation on February 4, 2005, during which she was noted to have given unreliable effort. The respondents contend that Dr. Rutherford released the claimant as having reached maximum medical improvement on February 8, 2005, and assessed a 5% permanent partial impairment rating to each hand on the same date. The respondents accepted this rating and paid \$2,982.90 in permanent partial disability benefits. Alternatively, respondents contend they are entitled to an offset or credit for any group health benefits received by the claimant.

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).

An injured employee is entitled as an absolute right to a one-time change of physician. A.C.A. § 11-9-514 (Repl. 2002); Collins v. Lennox Ind., Inc. 77 Ark. App. 303, 75 S.W.3d 204 (2002); Wal-mart Stores, Inc. v. Brown, 82 Ark. App. 600, 120 S.W.3d 153 (2003). A.C.A. § 11-9-514 (c)(1)-(3) outlines the procedure in which the employer is directed to deliver to the employee a form that explains the employee's rights and responsibilities concerning the change:

(c) (1) After being notified of an injury, the employer or insurance carrier shall deliver to the employee, in person or by certified or registered mail, return receipt requested, a copy of a notice, approved or prescribed by the Commission, which explains the employee's rights and responsibilities concerning change of physician.

(2) If, after notice of injury, the employee is not furnished a copy of the notice, the change of physician rules do not apply.

(3) Any unauthorized medical expense incurred after the employee has received a copy of the notice shall not be the responsibility of the employer.

In the instant case, the undisputed evidence demonstrates that the claimant was given a Form N in person which informed her of her rights and responsibilities concerning the change of physician. She signed the Form N on January 22, 2003, and by doing so acknowledged that she had been "provided with my rights regarding a change-of-physician". On October 16, 2003, the claimant signed

another document entitled "Change of Physician", in which she requested to change from Dr. Gullett to Dr. Rhodes. On October 30, 2003, an Order approving the Change of Physician was filed and mailed by certified-return receipt requested mail to the claimant. The evidence establishes that claimant sought medical treatment with Dr. Rhodes on October 22, 2003, and continued treatment with Dr. Rhodes and his referring doctors, Verma, Moore, and Rutherford through December of 2006. The evidence further demonstrates that in December of 2006, Dr. Rutherford determined that the claimant had reached maximum medical improvement and released her to return to full duty work. It is undisputed that respondents paid for all authorized treatment through December of 2006.

Notwithstanding Dr. Rutherford's release, the evidence demonstrates that the claimant sought additional unauthorized medical treatment with Dr. Marc Stevens, Dr. Torrance Walker, Dr. Anthony Gordon, and Dr. Tamer Alsebai from January of 2007 through September 11, 2007. In addition, the claimant testified that she has not worked at Tyson or any other job since February 20, 2007.

The claimant contends that Tyson personnel selected Dr. Rhodes and she was not aware that she could personally choose the doctor as part of the change of physician process. She explained that she believed that her treatment by Dr. Rhodes should be treated as a referral rather than her right to a one time change of physician. A.C.A. § 9-11-514(b)(Repl. 2002) states that treatment by a physician other than the claimant's authorized physician shall be at claimant's expense. The Arkansas Court of Appeals has determined that this section is not applicable if the

authorized treating physician refers the claimant to another doctor for examination or treatment. Bray v. International Wire Group, ___ Ark. App. ___, 235 S.W.3d (2006); Am. Greetings Corp. v Garey, 61 Ark. App. 18, 963 S.W.2d 613 (1998). Whether treatment is a result of a “referral” rather than a change of physician is a factual determination for the Commission. Dept. of Parks & Tourism v. Helms, 60 Ark. App. 110, 959 S.W.2d 749 (1988); Patrick v. Ark. Oak Flooring Co., 39 Ark. App. 34, 833 S.W.2d 790 (1992). In the instant case, the claimant requested a “second opinion”. The claimant testified that she told the company nurse that she did not know any doctors when asked about her change of physician. While the evidence is unchallenged that the respondents actually chose Dr. Rhodes, the claimant clearly agreed to the choice and pursued treatment with Dr. Rhodes and the other specialists to whom he referred her. Under the facts and circumstances of this case, I find that the claimant’s treatment by Dr. Rhodes was in the nature of a change of physician and not a referral as suggested by the claimant. Moreover, I find that all of the statutory requirements were met by both the claimant and respondent in the change of physician process. Therefore, I find that all medical treatment of the claimant by Dr. Stevens, Dr. Walker, Dr. Gordon, and Dr. Alsebai beginning on January 9, 2007, and continuing through September 11, 2007, was treatment by unauthorized physicians and shall be at claimant’s expense.

The claimant has alternatively requested that she be awarded an independent medical examination to determine what additional medical treatment is reasonable and necessary. Based on the credible medical evidence, I find that the respondents have provided claimant with all reasonable and necessary medical treatment related

to her compensable injury. Dr. Rutherford had released the claimant from treatment and has opined that there is no further medical treatment that would be helpful to the claimant. Dr. Walker, the claimant's doctor of choice, testified in his deposition that based on his review of the claimant's medical records, the claimant had been offered all there was to offer and did not have any further treatment that could help her. The claimant has undergone several surgeries and five years of medical treatment by orthopedic surgeons, hand specialists, and neurologists. She has undergone multiple nerve conduction studies, a functional capacity evaluation and other tests which Dr. Rutherford and Dr. Verma have relied upon in reaching their diagnosis and recommendations. Her continued complaints are subjective in nature and appear to be inconsistent with the original complaints and symptoms initially arising from the work-related activities. Based on the preponderance of the credible evidence, I find that the respondents have fulfilled the obligation of providing adequate medical treatment, diagnostic testing, and consultation with specialists as required by the Arkansas Workers' Compensation laws.

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, the claimant was released to light duty work and eventually full duty work after her numerous surgical procedures. The evidence demonstrates that with the exception of the days missed due to her

surgery, the claimant continued to work until she went on disability in February of 2007. Based on the preponderance of the evidence, I find that the claimant has not proven that she is entitled to additional temporary total disability benefits.

CONTROVERSION AND ATTORNEY'S FEES

In the instant case, the evidence has demonstrated that the respondents have paid all reasonable and necessary medical treatment related to the compensable injury and indemnity benefits due and therefore the claimant is not entitled to an award of statutory attorney's fee in accordance with Ark. Code Ann. § 11-9-715 (Repl. 2002). Moreover, the evidence demonstrates that the respondents have not controverted additional reasonable and necessary medical treatment from the claimant's authorized medical provider, Dr. Rhodes.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer/employee relationship existed on or about January 3, 2003, when claimant sustained a compensable bilateral carpal tunnel injury to both hands and wrists.
3. The claimant's earnings were sufficient to entitle her to a compensation rate of \$217.00 for temporary total disability and \$163.00 for permanent partial disability benefits. The claimant's average weekly wage was \$326.00.

4. Respondents have paid temporary total disability benefits and permanent partial indemnity benefits based on the 5% impairment rating to each wrist.
5. The claimant has failed to prove by a preponderance of the evidence that she is entitled to a change of physician.
6. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment or that an independent medical evaluation is reasonable or necessary.
7. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional temporary total disability benefits.
8. Because the claimant has not been awarded additional indemnity benefits, the claimant is not entitled to an award of attorney's fees.

ORDER

For the reasons discussed herein, this claim must be, and hereby is, respectfully denied.

IT IS SO ORDERED.

BARBARA WEBB
Administrative Law Judge