

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F612944

ROBBIE CLINE, EMPLOYEE

CLAIMANT

LENNOX INDUSTRIES, INC., EMPLOYER

RESPONDENT NO. 1

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

RESPONDENT NO. 1

SECOND INJURY FUND

RESPONDENT NO. 2

OPINION FILED MAY 29, 2008

Hearing before Administrative Law Judge Barbara W. Webb on February 29, 2008, in Pine Bluff, Jefferson County, Arkansas.

The claimant was represented by Ms. Sheila Campbell, Attorney at Law, Little Rock, Arkansas.

The respondents were represented by Ms. Betty Hardy, Attorney at Law, Little Rock, Arkansas.

The Second Injury Fund was excused from participation at this hearing.

STATEMENT OF THE CASE

A hearing was held on the above-styled claim on February 29, 2008, before Administrative Law Judge Barbara W. Webb. A Pre-hearing Order was entered in this case on July 10, 2007, and on December 12, 2007. The Pre-hearing Orders set forth the stipulations offered by the parties and outlined the issues to be litigated and resolved at the hearing. A copy of the Pre-hearing Orders were made Commission Exhibit No. 1 and 2, respectively, to the hearing record. The following stipulations as submitted by the parties and the Pre-hearing Order as amended on the record are hereby accepted:

STIPULATIONS

By agreement of the parties, the stipulations applicable to this claim are as follows:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The employer/employee/carrier relationship existed on or about January 2005, and at all other relevant times.
3. The claimant's average weekly wage was \$679.30, which would entitle him to a compensation rate of \$466.00 for temporary total disability benefits.
4. The claimant returned to work on June 12, 2006.

By agreement of the parties, the issues to be adjudicated are as follows:

1. The compensability of claimant's alleged injury on or about January 2005.
2. If found compensable, claimant's entitlement to temporary total disability benefits from March 1, 2006, until June 12, 2006, and claimant's entitlement to medical benefits.
3. Controversion and attorney's fees.

_____The record consists of a one volume transcript of the February 29, 2008 hearing consisting of the testimony of David Patterson, Robbie Cline, Tim Brown, and Jon Meyers, and all documentary evidence consisting of Commission's Exhibit No. 1 (Pre-hearing Order of 7-10-07); Commission's Exhibit No. 2 (Pre-hearing Order of 12-12-07); Claimant's Exhibit No. 1 (Deposition of Doctor Rhodes); Respondents' Exhibit No. 1 (Johnson Management Consulting Report);

Respondents' Exhibit No. 2 (DVD); and Respondents' Exhibit No. 3 (Form AR-C); and Joint Exhibit No. 1 (Medical records with index). Because the Second Injury Fund was excused from participation at the hearing, all references to respondents are to respondents No. 1.

CONTENTIONS

The claimant contends he sustained a compensable injury of carpal tunnel syndrome in the left and right wrists on or about January 2005, and is entitled to appropriate benefits.

The respondents contend that the claimant cannot meet his burden of proof that he has a work-related injury arising out of and in the course and scope of his employment with Lennox Industries. Specifically, respondents assert that the claimant's complaints of carpal tunnel syndrome are not causally related to his employment with Lennox Industries. Further, the claimant is alleging a date of injury in January, 2005. However, the claimant did not report a work-related injury until he filed a Form AR-C, in November 2006. Alternatively, the respondents assert an offset for all medical bills paid by the claimant's group health insurance and short term disability pursuant to § 11-9-411. Alternatively, the respondents contend that the period of temporary total disability benefits would end May 15, 2006, in accordance with Dr. Rhodes' deposition testimony.

FACTUAL BACKGROUND

Robert Cline has worked for Lennox Industries ("Lennox") for sixteen to seventeen years. He has worked as a machine operator, assembler, and as a

maintenance person. He testified that he has worked in maintenance since 2000. He testified that his duties include doing whatever it takes to keep the machines running to support production. The work activity includes the use of air guns, big wrenches, pipe wrenches, and other tools such as hydraulic jacks, electric drills, cordless drills, pry bars, and hammers. He explained that the work involves heavy lifting and can involve work overhead or in awkward positions. He testified that the work involved continual use of his hands during his eight hour shift.

He testified that in January of 2005, he noticed that his hands were cramping and hurting a lot. He sought medical treatment for his hands and neck from Dr. Davis. He underwent a nerve conduction test on September 13, 2005. He was not satisfied with the treatment from Dr. Davis and sought treatment with Dr. David Rhodes. He underwent another nerve conduction study. He testified that he reported his hand problems to the nurse, Tim Brown. He testified that Brown told him that it wasn't work-related and told him to continue treatment with his medical insurance. He explained that he asked Brown again about whether his treatment was under workers' compensation when he was scheduled for the surgery, but Brown told him "No" and that he would have to go through FMLA and use short-term disability. He underwent carpal tunnel surgery in 2006 on his the right wrist first and later on the left. He was off work for three to four months. His medical bills were paid through his medical insurance plan – insurance paid 80% and he paid 20%.

On cross-examination, Cline testified that he did not like dealing with Tim Brown because of problems he has had with other leave claims involving his child.

He was first told he had carpal tunnel by Dr. Rhodes in January of 2006. He admitted that he had put all of his medical treatment on his group health. He testified the reason he filed the claim was that he learned from a co-worker that worked on an assembly line that she was receiving workers' compensation for carpal tunnel. He admitted that during 2005-2006, he was also working a part-time job for the Sanitation Department for the City of Humphrey for three hours every Thursday on his off hours from Lennox. He received short term disability payments from March 1, 2006, until he returned to work in June of 2006. He admitted talking with David Patterson, a co-worker, who told him that Tim was lying to him and that Tim was supposed to do some workers' compensation papers on him and had treated him the same way. He told him to go to Tim Brown. He did not go to Tim Brown until November of 2006. He explained that he has always contended that his carpal tunnel was work-related and that he followed Brown's directions because he was the one who directs people on medical situations. He testified that after he talked with his co-worker, he contacted the Workers' Compensation Commission and filed his claim directly. The claim was filed on November 29, 2006.

He testified that his condition improved after the surgery. He explained that his mobility was reduced but he could use his hands and it stopped the pain. He testified that he could do work without pain after the surgeries but that some of the pain was returning.

David Patterson testified that he was employed by Lennox and had worked with the claimant in maintenance performing similar work for approximately four or

five years. He recalled a conversation between Brown and Cline about his complaints, as follows:

Robbie and I went up to the nurse's station, and he was inquiring to Tim Brown that he was having problems with his wrists and had been to the doctor and they told him that he had carpal tunnel, I think it was called. And, he told them that they said they thought it was workman's comp related. And at that time Tim told him, "They don't make that decision, we make it."

Brown told the claimant he would have to use short term disability if he had to take off work. He testified that he had a similar problem with a workers' compensation claim that he had eventually filed. On cross-examination, he testified that the conversation between Brown and Cline occurred prior to Cline's surgery because Cline knew he was going to have surgery at the time. He recalled that he later told Cline prior to Cline's surgery about the fact that he had contacted the Commission directly in connection with his claim.

Tim Brown testified that he was the onsite emergency medical technician for Lennox. He is also the administrator of the short term disability, FMLA, workers' comp, and attendance. He testified that he had worked with Cline on FMLA issues. He recalled a dispute in which Cline was not happy with an FMLA decision and complained about Brown to his HR Manager.

He testified that the only conversation he had with Cline was on December 15, 2005, when he learned Cline had been told he had carpal tunnel and needed surgery. He said that he gave him short term disability paperwork and that Cline asked him what causes carpal tunnel. Brown responded by asking him what his doctor had told him and Cline stated that the doctor was still doing testing. He

testified that Cline did not indicate he wanted to file a workers' compensation claim nor did he refuse to allow him to fill out workers' compensation paperwork. He did contact Cline about filling out the paperwork to file a workers' compensation claim after his supervisor received a letter from the Commission. He completed a Form N stating that the employer was notified of the claim or accident on February 28, 2007, at 3:00 p.m. He testified that he could not recall receiving any other carpal tunnel claims from maintenance employees but had received complaints from assemblers. He did not recall the meeting with Patterson and Cline and disputed the testimony that Cline told him that it should be a workers' compensation claim. He testified that Cline never told him that his carpal tunnel came from anything else other than work nor did he tell him that it came from work.

John Meyers testified that he is the Manager of Safety, Health, and Environmental Affairs for Lennox . He has worked in the position as Brown's supervisor since July 1, 2007. He testified that he was familiar with the job duties of a maintenance worker as reflected in the job analysis in the report from Johnson Management Systems and the DVD. He explained that it is a highly technical job involving diagnostics and physical activity such as pulling electrical wire, running conduit, machine repairs, operating different tools, fork lift operation, and others. He explained that the job varies from day-to-day and from hour-to-hour. He estimated that the job involved the use of power-assisted tools approximately fifteen or twenty percent of the time. He testified that based on his ergonomic surveillance of the job as a maintenance person, he had not seen any risk factors that could be

related to trauma disorders such as carpal tunnel. On cross-examination, he testified that moving wrists ten to twenty times per minute would be considered repetitive and that if a maintenance person had difficulty with a screw, it could involve to trauma and to cumulative trauma when coupled with excessive force or extreme posture.

Dr. Rhodes testified by way of deposition. He testified that he did his fellowship in hand surgery and was board certified in orthopedic surgery. He first treated the claimant on January 26, 2006. At that time, the claimant provided a history of hand pain and numbness. He ordered a nerve conduction study which resulted in findings of severe bilateral carpal tunnel syndrome. Cline did not provide him with any work history. He testified that he was familiar with referrals from Lennox for people with carpal tunnel. He explained that those patients used their hands extensively lifting and using power tools. He testified the use of air guns and hammers could contribute to carpal tunnel syndrome. He performed carpal tunnel release on April 12, 2006, on the left side and on March 1, 2006, on the right side. He did not take the claimant off work. He said Cline had reported being symptomatic for a year previous to his initial visit. He testified that after the surgery, Cline had full range of motion and did not need therapy or an impairment. He noted that his reports showed the claimant was still having incisional pain and he released him from medical treatment on May 15, 2006. He testified that his opinions were stated within a reasonable degree of medical certainty. On cross-examination, he testified that he was not familiar with the claimant's job duties and could not state

within a reasonable degree of medical certainty that his work caused his carpal tunnel syndrome. He testified that there were four different categories for a person to develop carpal tunnel: “anatomical, idiopathic, exertional or systemic”. He did not find that Cline had any anatomic reason for having carpal tunnel. He testified that idiopathic means an unexplained reason and that Cline would fall into either the idiopathic or exertional categories.

The medical records reflect that the claimant has a history of medical problems of hypertension, cervical degenerative disc disease, fibromyalgia. The initial nerve conduction study performed on September 2, 2005 resulted in normal findings with a notation that evaluation of cervical nerve root should be carried out. A subsequent MRI of the cervical spine resulted in normal findings. The records reflect that a subsequent nerve conduction study performed on January 31, 2006, resulted in findings of severe carpal tunnel syndrome in both upper extremities with the right worst than the left. Reports reflect that Dr. Rhodes performed carpal tunnel release on the right side on March 1, 2006 and the left side on April 12, 2006. On April 27, the claimant returned for a post-op evaluation without complaints. On May 15, 2006, he returned with complaints of continued pain in the left side. He was ordered into therapy and given a medrol dosepak and tramadol. He was scheduled to return back on an as needed basis.

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 he first experienced numbness and pain in his hands in 2005 while performing employment services. He sought treatment and subsequently underwent surgery in 2006 for severe bilateral carpal tunnel syndrome. He testified that the surgeries had helped, but that the pain was starting to return

The claimant explained that his work required him to perform a variety of tasks involving the use his hands and power tools.

The respondents rely on the testimony of Dr. Rhodes who testified that the claimant's carpal tunnel problems could be idiopathic or exertional, but was not provided with sufficient work information to determine if the carpal tunnel was work-related.

The respondents further rely on the fact that the claimant did not file his workers' compensation claim until November 29, 2006, and filed for short-term

disability and submitted all of his medical bills under his group health insurance. Claimant contends that he relied on the assistance of the company nurse in handling his medical treatment and was advised to use his short-term disability and group health coverage instead of worker's compensation by the company nurse. His testimony is corroborated by a co-worker, David Patterson.

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).

After review of the credible evidence, I find that the preponderance of the evidence demonstrates that claimant's carpal tunnel syndrome was work-related.

Dr. Rhodes did not offer an opinion as whether Cline's carpal tunnel syndrome was work-related. However, he did opine that it would fall into the category of either idiopathic or exertional. He further opined that work activity involving the use of power tools, air guns, hammers, and heavy lifting could contribute to the development of carpal tunnel syndrome. Based on the preponderance of the evidence, I find that the claimant sustained a compensable injury in the form of bilateral carpal tunnel syndrome. I find that the compensable injury caused physical harm to the claimant and arose out of and in the course of his employment. Moreover, the medical evidence is supported by objective findings, namely the severe bilateral carpal tunnel syndrome shown by electrodiagnostic testing. Finally, I find that the preponderance of the credible evidence proves that the compensable injury was the major cause of his disability and need for treatment.

B. 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 bilateral carpal tunnel syndrome release surgery. The record plainly shows post-surgical improvement.

Based on the preponderance of the credible evidence, I find that the medical services provided to the claimant beginning in 2005, by and at the direction of Dr. Davis and Rhodes, including the surgical release of the claimant's bilateral carpal tunnel syndrome, represent reasonably necessary medical services under Ark. Code Ann. § 11-9-508.

Finally, an employee who has sustained a compensable scheduled injury is to receive temporary total disability compensation during his healing period or until he 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).

I further find that the claimant has proven that he was rendered temporarily totally disabled, as the result of the effects of her compensable injury for the period beginning March 1, 2006, until June 12, 2006, the date he returned to work.

C. 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.
2. The employer/employee/carrier relationship existed on or about January 2005, and at all other relevant times.
3. The claimant's average weekly wage was \$679.30, which would entitle him to a compensation rate of \$466.00 for temporary total disability benefits.
4. The claimant returned to work on June 12, 2006.
5. The claimant has proven by a preponderance of the evidence that he suffered a compensable injury, i.e. bilateral carpal tunnel syndrome, while performing employment services.
6. Claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from the date he last worked, March 1, 2006, until June 12, 2006, the date he returned to work.

7. Claimant has proven by a preponderance of the evidence that the medical treatment by Dr. Davis and Dr. Rhodes, including the bilateral carpal tunnel release surgeries, was reasonable and necessary and related to his compensable work-related injury.
8. Respondents are entitled to an offset for all medical bills paid by claimant's group health insurance and short-term disability pursuant to Ark. Code Ann. § 11-9-411.
9. 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.

BARBARA WEBB
Administrative Law Judge
