

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F608860

DONNA FOGELSTROM	CLAIMANT
LOWE'S HOME CENTER	RESPONDENT
SPECIALTY RISK, INSURANCE CARRIER	RESPONDENT

OPINION FILED MARCH 24, 2008

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by JOE BYARS, Attorney, Fort Smith, Arkansas.

Respondents represented by JARROD RUSSELL, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on December 4, 2007, in Fort Smith, Arkansas.

A pre-hearing order was entered in this case on October 1, 2007. Prior to the commencement of the hearing, the parties announced that they had agreed on the appropriate weekly compensation rates. A copy of the pre-hearing order with this amendment noted thereon was made Commission's Exhibit No. 1 to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On all relevant dates, the relationship of employee-self insured employer-TPA existed between the parties.

2. The appropriate weekly compensation benefits are \$328.00 for total disability and \$246.00 for permanent partial disability.
3. The claim is controverted in its entirety.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. whether the claimant sustained compensable injuries to her wrists/hands, as the result of a specific incident on July 30, 2006 and August 1, 2006, or the result of cumulative trauma over time.
2. The claimant's entitlement to medical services, temporary total disability from August 2, 2006 through a date yet to be determined, and attorney's fees.
3. whether the claimant is barred from receiving any benefits, prior to August 10, 2006 by Ark. Code Ann. §11-9-701.
4. Appropriate attorney's fee.

In regard to these issues, the claimant contends:

"The claimant Donna Fogelstrom, contends that she suffered a compensable injury arising out of and in the course of her employment with the respondent. In July and on August 1, 2006, Donna Fogelstrom was in the process of lifting landscape blocks, plants, soil, mulch, and fencing in the course and scope of her employment with Lowe's Home Center, injuring both of her wrists. Donna Fogelstrom suffered pain and injury to her wrists which caused her to cease work activity. Donna Fogelstrom provided notice of the occurrence to her employer. Donna Fogelstrom has been unable to work due to the injury since August 2, 2006, and is seeking temporary total disability from August 2, 2006, to a date to be determined."

In regard to these issues, the respondents contend:

“Respondents contend that claimant did not sustain a compensable injury arising out of and in the course and scope of her employment. Respondents paid for the claimant’s initial medical treatment at Pro-Med on August 10, 2006, before controverting this claim in its entirety.”

DISCUSSION

I. COMPENSABILITY

The central issue in this case is the question of whether the claimant sustained “compensable injuries” to her wrists/hands, either as the result of specific incidents on July 30, 2006, and/or August 1, 2006 or as the result of cumulative trauma from the claimant’s day to day employment activities. The burden rests upon the claimant to prove all of the facts necessary to establish a “compensable injury”.

First, the claimant must satisfy the statutory requirements of Ark. Code Ann. §11-9-102(4)(D). This subsection mandates that the actual existence of the physical injury or condition that is alleged to be compensable must be “established” by medical evidence. Further, the actual existence of this physical injury or condition must be supported by “objective findings”, as that term is defined by Ark. Code Ann. §11-9-102(16)(A)(i).

In the present case, the medical evidence clearly “establishes” the actual existence of a physical injury or condition involving the claimant’s wrists/hands. Essentially every physician who has examined or evaluated the claimant, since August 2, 2006, has opined that the claimant is experiencing some type of

physical injury with this portion of her body. These physicians include two general practitioners (Dr. Jay Arendall and Dr. Ted Hood), two orthopaedic surgeons (Dr. Michael Wolfe and Dr. Michael Moore), and one plastic surgeon/hand specialist (Dr. James Kelly). The general consensus of all of these medical experts is that the claimant has experienced injuries to her wrists/hands that is in the form of "overuse syndrome". Although various other possible defects have been noted, which involved either the claimant's right or left wrists/hands, the consensus of the expert medical opinion is that the claimant's symptoms and difficulties are not caused by these defects and that these defects represent mere incidental findings.

The evidence presented shows numerous "objective findings" that support the existence of a number of defects or conditions involving the claimant's wrists/hands. These findings include visual observation of swelling during several clinical examinations effusion or fluid in both wrist joints, and an irregularity of the triangular fibrocartilage in the left wrist, noted on an MRI, and a dye leakage (suspicious for a lunate-triquetral ligament tear in the left wrist) noted on an arthrogram. However, as previously noted, many of these objective findings only support the existence of the various incidental conditions affecting the claimant's wrists, but which have not been shown to be the cause of the claimant's symptoms and complaints with her wrists/hands. The only "objective finding" that would support the diagnosis of the

claimant's current symptoms and complaints would be the swelling of the claimant's wrists/hands.

Therefore, it is my opinion that the greater weight of the medical evidence "establishes" the actual existence of a physical injury to the claimant's wrists/hands, in the form of overuse syndrome. I further find that the greater weight of the credible evidence shows that the actual existence of this diagnosed injury or condition is supported by "objective findings" or the independently observed findings that are beyond the claimant's voluntary control. Thus, the claimant has satisfied the statutory requirements for a "compensable injury" that are contained in Ark. Code Ann. §11-9-102(4)(D).

Next, the claimant must prove that this medically established and objectively documented physical injury or condition satisfies the definitional requirements for a "compensable injury", as contained in either Ark. Code Ann. §11-9-102(4)(A)(i) or §11-9-102(4)(A)(ii)(a).

In order to constitute a "compensable injury" under Ark. Code Ann. §11-9-102(4)(A)(i), the claimant must prove that her right wrist injury:

- (1) arose out of and occurred in the course of her employment;
- (2) was caused by a specific incident;
- (3) is identifiable by time and place of occurrence;
- (4) caused internal or external physical harm to her body; and

- (5) required medical services or resulted in disability.

In order to constitute a “compensable injury”, under Ark. Code Ann. §11-9-102(4)(A)(ii)(a) the claimant must prove that her wrists/hands injury:

- (1) arose out of and occurred in the course of her employment;
- (2) caused internal or external physical harm of her body; and
- (3) was in the form of carpal tunnel syndrome or was caused by rapid repetitive motion.

For an injury to be “compensable”, under Ark. Code Ann. §11-9-102(4)(A)(ii)(a), the employment related injury or contribution to the ultimate condition must also be the “major cause” (i.e. more than 50 percent of the cause) of the claimant’s need for medical treatment or disability, Ark. Code Ann. §11-9-102(4)(E)(ii).

Under Ark. Code Ann. §11-9-102(4)(A)(i) or §11-9-102(4)(A)(ii)(a) the physical injury must arise out of and occur in the course of the employment and cause internal or external physical harm to the claimant’s body. Under both of these subsections, the physical injury must also require medical services or result in disability. However, for injuries falling under the category defined in §11-9-102(4)(A)(i), the employment related injury need only be a cause of the need for medical treatment. For injuries following under Ark. Code Ann. §11-9-102(4)(A)(ii)(a), the employment related injury must be the major cause or more than 50 percent of the cause of either the need for medical treatment or of the disability sustained.

In order for an injury to arise out of and occur in the course of the employment, the evidence must show the existence of a causal relationship between the injury and some aspect of the employment. This may be an employment related event, an employment related activity, or the general employment environment.

The testimony of all the witnesses clearly indicate that the claimant's employment activities with this respondent required constant and strenuous use of her hands, wrists, and arms. This included not only the testimony of the claimant, but also the testimony of two co-employees, Katherine Harrington and Ed Meeks. No evidence was presented by the respondent to refute this fact.

From the medical evidence presented, it appears to be the consensus opinion of all the physicians involved in this case that the claimant's difficulties with her wrists/hands are likely the result of her hand intensive employment activities for this respondent. This is particularly true in regard to the opinions of Dr. Michael Wolfe and Dr. Michael Moore, both of whom are orthopaedic surgeons. Dr. Moore is not only an orthopaedic surgeon, but is well recognized as one of the foremost hand and wrist experts in the state. His opinion is certainly entitled to significant weight and credit. It further appears that these physicians had sufficient reliable information available to form these expert medical opinions. There is no evidence that the opinions of these two physicians are in no way based upon any mistake of material fact. Thus, I find these expert medical

opinions to be stated with a reasonable degree of medical certainty.

Clearly, the claimant's difficulties with her wrists/hands could logically be attributable to her strenuous hand intensive employment related activities for this respondent. There is no evidence of any other equally reasonable or plausible cause of these difficulties. Further, these difficulties manifested themselves within a reasonable period of time following the employment related activities. When the foregoing facts are considered in light of the expert medical opinion presented, I find that the claimant has proven by the greater weight of the credible evidence the likely existence of the necessary causal relationship between her employment related activities for this respondent and her difficulties with her wrists/hands, in the form of overuse syndrome.

Thus, I find that the claimant has proven the occurrence of a physical injury to her wrists/hands that arose out of and occurred in the course of her employment with this respondent. This would satisfy the first common requirement of both §11-9-102(4)(A)(i) and §11-9-102(4)(A)(ii)(a). However, the mere fact that the claimant's wrists/hands difficulties are employment related does not automatically make them compensable.

The next common requirement for a compensable injury is that it must cause external or internal physical harm to the claimant's body, at least temporarily. Visual observation of swelling in the claimant's wrists/hands that was repeatedly noted in the medical

evidence is sufficient to prove that the employment related injury to this portion of the claimant's anatomy caused internal physical harm to her body, at least on a temporary basis. The claimant's testimony that describes the nature and magnitude of her physical complaints would further support this conclusion. Based solely upon the medical evidence, I find that the claimant has satisfied the second common requirement for a compensable injury, under either Ark. Code Ann. §11-9-102(4)(A)(i) or §11-9-102(4)(A)(ii)(a).

Although both of the afore cited categories of compensable injuries require an employment related cause, the difference arises over the nature of this employment related cause. Under Ark. Code Ann. §11-9-102(4)(A)(i), the physical injury must be caused by a specific incident and be identifiable by time and place of occurrence. Under Ark. Code Ann. §11-9-102(4)(A)(ii)(a), the employment related cause must be rapid repetitive motion (except in cases where the injury is in the form of carpal tunnel syndrome), and the actual time and place of occurrence of the injury need not be identified.

Thus, the next question is whether the claimant's employment related injury to her wrists/hands were caused by a specific incident and is identifiable by time and place of occurrence. The claimant's testimony is the only direct evidence that she has presented to prove both the occurrence of a specific employment related incident and to connect such an incident or incidents with her wrists/hands difficulties.

The claimant testified that, on or about July 30, 2006, she was pushing a cart, loaded with plants, with one hand and pulling another cart loaded with plants, with the other. At that time, she noticed pain in her left wrist. She told a co-employee, Ed Meeks, of this incident and resulting difficulties. However, she continued working for the remainder of that day and the following day. On the following day, August 1, 2006, she helped load twelve "pavers" (concrete patio blocks) that weighed approximately 38 pounds a piece and twelve bags of top soil that weighed 40 pounds a piece. She noticed no difficulties or complaints, either at the time of this activity or for the remainder of that day. However, when she awoke the next morning (August 2, 2006) her hands were swollen. She went to her family physician, Dr. Arendall, and he sent her to the Sparks Regional Medical Center emergency room.

The claimant's testimony, concerning these events, is not particularly supported by the other evidence presented. This includes both the medical records and the testimony of her witnesses.

Edward Meeks, testified that the claimant did tell him that she had hurt her wrists/hands. However, he stated that this conversation occurred after she was already wearing a brace or splint on her wrists. Clearly, the conversation described by Mr. Meeks could only have occurred after the claimant had seen Dr. Arendall on August 2, 2006. This conversation most likely occurred when the claimant attempted to return to employment with the respondent after seeing Dr. Hood on August 10, 2006.

Katherine Harrington testified that early one morning she helped the claimant load pavers or patio blocks into a customer's truck. She could not recall the date on which this activity occurred. However, she then testified that she believed that this incident occurred in early July of 2006. On further examination, she stated that this incident could have occurred on August 1, 2006. Ms. Harrington only recalled moving the patio blocks and not any bags of top soil. It was also her testimony that on two occasions, shortly after she helped in loading these blocks, the claimant complained of her wrist hurting. Her testimony concerning the claimant complaining of her wrist "shortly after" performing this activity would be inconsistent with the claimant's testimony that she experienced no difficulties with her wrist at that time. It must also be noted that the claimant did not work between August 1, 2006 and August 10, 2006. Thus, the claimant could not have complained to Ms. Harrington during this interval. It would appear from these inconsistencies that the incident described by Ms. Harrington was not the same incident as that described by the claimant, as occurring on August 1, 2006.

In his testimony, Dennis Fogelstrom (the claimant's husband) testified that the claimant came home one day with complaints of discomfort in her hands and that the next day she woke up with severe pain and swelling in her wrists, hands, and fingers. At that point, he took the claimant to her family physician, Dr. Arendall. He further stated that the claimant had previously mentioned minor discomfort with her wrists/hands, but no symptoms

similar to or of the magnitude that she experienced on August 2, 2006. It would appear from Mr. Fogelstrom's testimony that the claimant came home with complaints of discomfort in her hands, on August 1, 2006, would also be contradictory to the claimant's testimony that she experienced no discomfort on that date.

Most importantly, none of the initial medical reports or records contain a history of any incident involving the pushing or pulling of carts as precipitating or playing a causal role in the claimant's wrists/hands difficulties. The only mention of pushing and pulling is found in the record of Dr. Michael Moore, dated October 5, 2006. Even when this activity is mentioned in these records, the pushing or pulling is described more as a cumulative activity, rather than a specific incident or event. In fact, throughout the medical histories, there is no mention of any singular or identifiable incident or event as triggering or causing the claimant's wrists/hands complaints. Rather, the various histories simply mention prolonged or extensive employment activities requiring strenuous and repetitive use of the claimant's arms and hands. In fact, in an unsigned Cooper Clinic report dated August 28, 2006, it is expressly recorded that "there is no history of injury". (Curiously, this is the first page of a two page report and the second page, which would have borne the physician's signature, has not been submitted).

After consideration of the evidence presented, it is my opinion that the greater weight of the credible evidence fails to prove that employment related cause of the claimant's bilateral

wrists/hands difficulties were any particular or distinguishable incident or event. Further, the greater weight of the credible evidence presented fails to identify the time and place of occurrence of any physical injury to the claimant's wrists/hands. Thus, the claimant's employment related wrists/hands difficulties would not meet the definition of a "compensable injury", as set out in Ark. Code Ann. §11-9-102(4)(A)(i).

The final question is whether the claimant's employment related injuries to her wrists/hands were caused by "rapid repetitive motion". The Appellate Courts have held that "repetitive" motion does not require that each movement performed be identical. The Appellate Courts have also declined to set any definite quantitative limits on how often movement must occur in order to be "rapid" (i.e. "x" amount of times per second, minute, hour, etc.).

In the present case, the evidence presented overwhelmingly shows that the claimant's employment activities required her to almost constantly be using her hands and wrists for extended periods of time to lift, push, pull, and otherwise manipulate plants and other objects. As previously noted, this fact is not based only on the claimant's testimony, but on the testimony of all the witnesses called. As previously noted, all of the medical experts, whose reports have been presented in this case, are of the opinion that it the most likely or probable cause of the injuries and resulting difficulties involving the claimant's wrists/hands, on and after August 2, 2006, were the claimant's prolonged hand

intensive activities required by her employment. Further, it was the opinion of all these physicians, that even though there were other abnormalities involving the claimant's wrists, it was her employment related injuries that were the sole cause of her hands/wrists difficulties that resulted in her need of medical services and produced, at least, temporary disability.

After consideration of all the evidence presented, it is my opinion that the claimant has proven that her medically established an objectively documented physical injuries to her wrists/hands, in the form of overuse syndrome, were caused by "rapid repetitive motion" of these portions of her body, required by her employment. Therefore, she has satisfied the final definitional requirement for a "compensable injury", under Ark. Code Ann. §11-9-102(4)(A)(ii)(a).

Further, I find that the greater weight of the evidence presented shows that these employment activities were not only the "major cause", but were the sole cause of her need for medical services and were the sole cause of the temporary disability she experienced. Thus, she has also satisfied the requirement of Ark. Code Ann. §11-9-102(4)(E)(ii) for a compensable injury under Ark. Code Ann. §11-9-102(4)(A)(ii)(a).

II. BENEFITS

Clearly, the claimant would be entitled to reasonably necessary medical services for her compensable injury, under Ark. Code Ann. §11-9-508. However, the claimant still has the burden of

showing that the medical services she actually received, in fact, represent “reasonably necessary medical services”.

In order to be “reasonably necessary”, medical services must be necessitated by or connected with the compensable injury. Further, these services must have a reasonable expectation of accomplishing the purpose or goal for which they are intended at the time they are rendered.

In the present case, the evidence shows that the medical services provided the claimant for her bilateral wrists/ hands difficulties by and at the direction of Dr. Jay Arendall, Dr. Ted Hood, Dr. Michael Wolfe, and Dr. Michael Moore represent medical services necessitated by or connected with the claimant’s compensable injury. Further, the greater weight of the evidence establishes that these services had a reasonable expectation of accomplishing the purpose or goal for which they are intended, at the time they were rendered. In fact, the greater weight of the evidence presented shows that these services actually accomplished their intended purpose of accurately diagnosing the nature and extent of the claimant’s compensable injuries and resolving the physical damage caused.

I would note that the claimant has also been evaluated and treated for her bilateral wrists/hands complaints by Dr. James Kelly. Dr. Kelly is a plastic surgeon, but also treats certain injuries and difficulties with the hands and wrists. However, it is my opinion that the services provided by Dr. Kelly were not reasonably necessary for the claimant’s compensable injuries and

did not have a reasonable expectation of accomplishing any purpose connected with these injuries.

At the time these services were rendered, the medical evidence shows that the claimant had already been evaluated by two orthopaedic surgeons as well as two general practitioners. At the direction of these physicians, extensive testing had been performed on the claimant. In fact, it appears that almost all of the generally recognized tests had been conducted. These tests included multiple plain x-rays, an MRI study, a bone scan, a triple phase bone scan of the claimant's wrists, a nerve conduction study of the claimant's upper extremities, wrist arthrograms, a venous Doppler study of her upper extremities, and a Functional Capacity Evaluation. On the basis of this testing and these physical examinations and testing, it was the general consensus that the claimant's compensable injuries were in the form of an overuse syndrome. The record further shows that these physicians provided the claimant with extensive appropriate conservative treatment extending over a period of months. During this course of treatment the swelling in the claimant's wrists/hands resolved. Except for the claimant's subject complaints all follow up examinations of the claimant's wrists/hands were essentially normal. The validity of the claimant's continued subjective complaints is called into question by her FCE results. On the basis, Dr. Moore concluded that the claimant would not benefit from further conservative therapy or surgical intervention. He also opined that the claimant

did not require any further evaluation or treatment. Dr. Wolfe concurred with these conclusions made by Dr. Moore.

Dr. Moore is widely recognized as one of the leading specialists in this state in the evaluation and treatment of injuries and conditions involving the wrists and hands. I find his opinions to be persuasive.

I would note that Dr. Kelly reached a diagnosis that the claimant was suffering from fibromyalgia that involved not only her wrists and hands, but also her arms, shoulders, and neck. His treatment was directed toward this diagnosis. I would also note that Dr. Kelly's diagnosis was supported by the observation of muscle spasms involving not only the wrist/hand area, but also the entire arms, shoulders, and neck. These spasms were clearly a new symptom that was first observed months after the claimant had ceased her employment with this respondent. Finally, I would note that the medical evidence shows that the claimant has an extensive history of similar complaints and even a diagnosis of fibromyalgia to these portions of her body, long before the current compensable injuries.

The final matter concerns the claimant's entitlement to temporary total disability benefits. As the claimant's compensable injury was to a portion of her body that is scheduled under Ark. Code Ann. §11-9-501, her entitlement to temporary total disability benefits would be controlled by the provisions of this subsection. Under this subsection, the claimant would be entitled to temporary total disability benefits for her compensable injuries until she

had returned to work or her healing period ended, whichever occurred first.

The record reveals that the claimant attempted to return to work for the respondent, at limited or light duty, on August 14, 2006. This return to work was based upon the report of Dr. Hood, the respondent's company physician. On August 10, 2006, Dr. Hood released the claimant to return to work wearing splints on both wrists with no pulling or pushing over 15 pounds or repetitive motion of lifting with hands and arms. The respondent apparently returned the claimant to a cashier's position. The claimant testified that she was unable to continue more than one day in this position because it aggravated her symptoms and increased her pain. Although the position the claimant was given would generally comply with Dr. Hood's restrictions, it would still require constant or repetitive use of the claimant's hands and fingers and even likely require movement and use of her hands and arms, on a frequent basis, to move, scan, and bag items for customers. These activities would logically aggravate and increase the claimant's symptoms. I find that the claimant's brief return to limited or light duty employment does not represent a "return to work", as that term is used in Ark. Code Ann. §11-9-521.

The duration of the healing period is a medical question and must be resolved on the basis of the greater weight of the medical evidence presented. The healing period is that time necessary for the resolution or stabilization of the actual physical damage caused by the physical injury. Once this underlying physical damage

has resolved or at least stabilized, at a level where nothing further in the way of time or medical treatment offers a reasonable expectation of improvement, then the healing period has ended. The mere continuation of symptoms and even the receipt of medical care for these symptoms does not, in and of itself, act to extend the healing period.

After consideration of the medical evidence presented, I find that the greater weight of this evidence establishes that the claimant's healing period from the effects of her compensable injuries had ended by October 19, 2006. On that date, Dr. Moore expressed the opinion that no further treatment or evaluation of the claimant's injury was reasonably appropriate or necessary. As previously stated, Dr. Moore is a highly qualified expert in the area of medicine associated with the claimant's compensable injury. His opinion would be entitled to greater weight and credit and would outweigh the opinions of any of the opinions of the other medical experts in this case. Further, his opinion is supported by the other evidence presented. Prior to October 19, 2006, the swelling that resulted from the claimant's compensable injury had resolved. The various other tests and examinations on the claimant failed to reveal any findings to substantiate the claimant's continued subjective complaints. Substantial doubt is cast upon the validity of the claimant's continued subjective complaints by the unreliable efforts she exhibited on the Functional Capacity Evaluation (FCE).

In summary, I find that the claimant has proven that she continued within her healing period from the effects of her compensable injury and had not returned to work for the period beginning August 2, 2006 and continued through October 16, 2006. Thus, she has proven that she was rendered temporarily totally disabled for this period. However, as she has failed to prove that she continued within her healing period from the effects of her compensable injury, after October 19, 2006, and would not be temporarily totally disabled after that date.

III. ARK. CODE ANN. §11-9-701

_____The final issue to be addressed is whether the claimant is barred from receiving benefits for her compensable injuries, prior to August 10, 2006, by the provisions of Ark. Code Ann. §11-9-701. The provisions of this section were timely raised by the respondent.

Ark. Code Ann. §11-9-701 generally provides that a respondent is relieved of liability for any benefits under the Act, until the injured employee provides the respondent employer with notice of the injury, on a form prescribed or approved by this Commission. However, for this rule to apply, the reporting procedures required by the respondent employer must be reasonable and the employee must be afforded reasonable notice of the reporting procedure.

Further, this section sets out the various exceptions to the general rule. Two of these exceptions are somewhat limited in scope. The first is where the injured employee is physically or mentally unable to report the injury, and the second deals only

with emergency medical treatment. The remaining exceptions are more general in nature. These exceptions excuse compliance with the required reporting procedure, if:

(1) The employer had actual knowledge of the injury.

(2) The employee had no knowledge that the condition or difficulties were causally related to his or her employment (arose out of and occurred in the course of the employment).

(3) This Commission excuses the failure on the grounds that for some satisfactory reason the required notice could not be given.

In the present case, all of the evidence presented indicates that the respondent employer was not advised of an employment related injury to the claimant's wrists/hands until August 9, 2006. The claimant testified that she did not immediately report her difficulties, as an employment related injury because she was not initially aware that these difficulties were causally related to her employment. She testified that once she was advised by Dr. Arendall that her difficulties were employment related, in the form of an overuse syndrome, she called her supervisor and informed him of this fact. She was directed by her supervisor to report the following day, August 10, 2006. At that time, the claimant was sent by the respondent to Dr. Hood. The actual notice form does not appear to have been completed until August 18, 2006.

There is no evidence presented to indicate that the claimant was or should have been reasonably aware that her difficulties were or could be employment related, prior to August 9, 2006. It must also be noted that the claimant's testimony, concerning the events

surrounding the reporting of her difficulties as employment related, is identical with that found in Dr. Hood's initial medical record of August 10, 2006.

It is my opinion that the greater weight of the credible evidence shows that, prior to August 9, 2006, the claimant was unaware that her difficulties were employment related and that, once she became aware of this fact, she timely reported her injury to the respondent. The evidence shows that by August 9, 2006, the respondent had actual notice that the claimant was contending that she sustained an employment related injury to her wrists/hands. Therefore, it is my opinion that the claimant is not barred from receiving any appropriate workers' compensation benefits by the provisions of Ark. Code Ann. §11-9-701.

FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. On all relevant dates, on or before August 1, 2006, the relationship of employee-self insured employer-third party administrator existed between the parties.

3. On all relevant dates, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$328.00 for total disability and \$246.00 for permanent partial disability.

4. On and before August 1, 2006, the claimant sustained compensable injuries to her wrists/hands, in the form of overuse syndrome. Specifically, the claimant has established the actual existence of this condition by medical evidence, which is supported

by objective findings. She has also proven by the greater weight of the credible evidence that these employment related injuries to her wrists/hands arose out of and occurred in the course of her employment with the respondent, caused internal physical harm to her body, were caused by rapid repetitive employment related motion. Finally, that these employment related injuries were the "major cause" of her need for medical treatment and her temporary total disability.

5. The medical services that were provided the claimant for her compensable wrists/hands injuries by and at the direction of Dr. Jay Arendall, Dr. Ted Hood, Dr. Michael Wolfe, and Dr. Michael Moore represent reasonably necessary medical services within the meaning of Ark. Code Ann. §11-9-508. Pursuant to the provisions of this subsection, the respondent is liable for these expenses, subject to the medical fee schedule established by this Commission.

6. The claimant has failed to prove that any medical services that were provided to her by and at the direction of Dr. James Kelly for fibromyalgia represent reasonably necessary medical services for her compensable wrists/hands injuries. Specifically, she has failed to prove that these medical services were reasonably necessary for her compensable wrists/hands injuries in the form of overuse syndrome, and had a reasonable expectation of accomplishing any beneficial purpose in regard to these injuries.

7. The claimant was rendered temporarily totally disabled, as a result of her compensable wrists/hands, injuries for the period beginning August 2006 and continuing through October 19, 2006.

Specifically, she has proven that during this period of time she continued within her healing period from the effects of her compensable injuries and had not returned to work.

8. The respondent has controverted this claim in its entirety.

9. The appropriate fee for the claimant's attorney is the maximum statutory attorney's fee on the temporary total disability benefits herein awarded.

10. The respondents are entitled to a set off for any group benefits paid the claimant for medical services or disability, which could coincide with the medical services and disability benefits herein awarded, under the provisions of Ark. Code Ann. §11-9-411.

11. No benefits herein awarded are barred by the provisions of Ark. Code Ann. §11-9-701. The respondent received actual notice of the claimant's compensable injuries as soon as the claimant became aware of the fact that such injuries were employment related.

ORDER

The respondent shall pay to the claimant temporary total disability benefits for the period of August 2, 2006 through October 19, 2006. This liability is subject to the set off provisions of Ark. Code Ann. §11-9-411.

The respondent shall be liable for the expense of medical services provided to the claimant for her compensable injuries by and at the direction of Dr. Jay Arendall, Dr. Ted Hood, Dr. Michael Wolfe, and Dr. Michael Moore. Such liability shall be subject to

the medical fee schedule established by this Commission and is also subject to any set off provided by Ark. Code Ann. §11-9-411.

The respondent is not liable for the expense of any medical services provided to the claimant for any wrists/hands difficulties by and at the direction of Dr. James Kelly for the reasons heretofore set forth in this Opinion.

The respondent shall pay to the claimant's attorney the maximum statutory attorney's fee on all temporary total disability benefits herein awarded. This fee shall be based upon these benefits prior to any set off under Ark. Code Ann. §11-9-411.

All benefits herein awarded have heretofore accrued and are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE