

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F709077**

<b>KEITH RAMBO, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>UNITED FABRICATORS, INC., EMPLOYER</b>	<b>RESPONDENT</b>
<b>BRIDGEFIELD CASUALTY INSURANCE, INSURANCE COMPANY</b>	<b>RESPONDENT</b>

**OPINION FILED MAY 20, 2008**

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH W. HOGAN on February 21, 2008 at Fort Smith, Sebastian County, Arkansas.

Claimant represented by the HONORABLE EDDIE H. WALKER, Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE JAMES ARNOLD II, Attorney at Law, Fort Smith, Arkansas.

**ISSUES**

A hearing was conducted to determine the claimant's entitlement to payment of medical expenses, temporary total disability benefits, and attorney's fees.

At issue is whether or not the claimant sustained a gradual compensable injury as defined by Ark. Code Ann. 11-9-102. All other issues are reserved.

After reviewing the evidence impartially without giving the benefit of the doubt to either party, Ark. Code Ann. §11-9-704, I find the evidence does not preponderate in favor of the claimant.

**STATEMENT OF THE CASE**

The parties stipulated to an employer-employee-carrier relationship on July 18, 2007 at which time the claimant was earning sufficient wages to be entitled to a compensation rate of \$376.00/\$282.00, in the event this claim is found to be compensable.

The claimant contends that he developed bilateral carpal tunnel syndrome (CTS) as a result of his job duties. The claimant seeks payment of medical expenses, temporary total disability benefits from August 21, 2007 to a date yet to be determined and attorney's fees.

The respondents contend the claimant did not sustain a compensable injury arising out of and

in the course of his employment.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits contained in the transcript along with Dr. Martimbeau's deposition and a videotape of the claimant's job duties incorporated by reference.

The following witnesses testified at the hearing: the claimant, co-worker Jeremy Nash, who appears in the video; and production manager, Bob Grinder.

The claimant, age 22 (D.O.B. November 11, 1985), is right hand dominant. His health history includes a March, 2007 head, neck and back injury with numbness in both hands. The claimant testified this condition resolved before he went to work for the respondent-employer on July 18, 2007. The claimant's hobbies include weight-lifting, which he stated did not bother his wrists. He demonstrated his technique, keeping his wrists in a fixed position.

The claimant worked for the employer a total of twenty-two days. With the exception of three days when he was assigned to drive a truck, the claimant operated a computerized flow-jet machine, cutting sheet metal.

The job duties required the claimant to lift varying sizes of sheet metal, load them into the machine, and tighten clamps with both hands to hold the metal in place. He operated a computer to cut the metal. Once the cutting was finished, he loosened the clamps and sprayed the metal with a water hose. The water was removed with a squeegee before the claimant wrote a number on the sheet metal. There was no quota and the number of clamps varied between two to ten depending on the size of the sheet metal.

The claimant testified that he developed numbness and tingling in his hands after a couple of weeks of work. He reported the problem to manager, Bob Grinder. He began wearing wrist wraps that he borrowed from his mother.

At his own expense, the claimant saw Dr. Samms and Dr. Martimbeau beginning in August, 2007. He was diagnosed with CTS after an EMG/NCV test. The insurance carrier sent him to Dr. Holder in August, 2007.

In October, 2007, Dr. Martimbeau performed surgery on the claimant's left hand. A couple of months after surgery, the employer offered the claimant light duty, "pushing a broom" but the claimant testified he never returned to work after his doctor excused him from work.

Mr. Grinder, the manager, confirmed that the claimant reported the problem to him but the claimant did not relate the condition to his work. He stated the machine cuts 10 inches per minute.

Mr. Nash, who appears in the video, testified the size of the metal and the number of clamps needed to secure the metal varies. He estimated that on average, it took 10-20 minutes to cut a medium size piece of metal, however, the demonstration video was much shorter. The machine operator is inactive during the period of time the computerized machine is cutting the metal.

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### **MEDICAL EVIDENCE**

While working for a different employer in March, 2007, the claimant's neck and back were injured when a 60-80 lb. panel fell on his head. He reported numbness in his hands but there are no follow-up reports indicating the claimant required further treatment for this injury. However, a Cooper Clinic report dated August 29, 2007 shows the claimant was treated from March to May for this injury. It would be understandable if the compression of the neck temporarily produced radiculopathy in the hands. I also note this injury did not prevent the claimant from taking up weight lifting as a hobby. A Cooper Clinic report dated August 16, 2007 indicates the claimant started weight lifting a month earlier in July 2007.

The claimant has been treated by Dr. Samms, Dr. Claude Martimbeau and Dr. Keith Holder for the injury in the case at bar. Initially, the claimant saw Dr. Samms on August 16, 2007 complaining of wrist pain caused by his job duties. Dr. Samms commented, "I am a little suspicious about the history of this patient's pain," but he doesn't explain why. The claimant was also treated by Dr. Holder who returned the claimant to work with restrictions on August 29, 2007.

The claimant saw Dr. Martimbeau on August 21, 2007 complaining of numbness and tingling in his hands, worse in the left hand. The symptoms began two weeks earlier and were aggravated by the claimant's repetitive motion work. An EMG/NCV study conducted August 23, 2007 was

positive for bilateral carpal syndrome worse on the right. The Doctor excused the claimant from work in a letter dated September 4, 2007 until surgery could be performed. He commented, “since the patient has not had any specific injury involving his hands, other than doing a lot of repetitive type of work at this job, this should be related to physical activities happening at his job.”

In his deposition, Dr. Martimbeau testified he began treating the claimant on August 21, 2007. Based on an abnormal EMG/NCV study, surgery was performed on the claimant’s left hand on October 15, 2007. Dr. Martimbeau opined the claimant’s CTS was caused by his job duties based on the claimant’s history. He did not have a detailed job description, (Depo. p. 6-7, 11, 14, 16, 20-23).

Dr. Martimbeau was not aware the claimant had bilateral numbness in his hands following a March, 2007 head and neck injury. However, without an EMG/NCV study, the doctor could not diagnose these earlier symptoms as CTS, (Depo. p. 7-8. 19-20).

Dr. Martimbeau was also not aware of the duration of the claimant’s employment (Depo. p. 10). Dr. Martimbeau felt that any job requiring squeezing, pushing, and twisting can cause or aggravate CTS. He felt the claimant reached the end of his healing period as of the date of his last appointment on January 14, 2008. They were awaiting approval by the insurance company before performing surgery on the right hand, but the Doctor specified no work restrictions, (Depo. p. 16-17). On cross-examination, Dr. Martimbeau opined that the claimant should have been placed on restricted duty from August 21, 2007 until surgery is performed on the right hand.

On redirect, Dr. Martimbeau stated he did not find compression of the nerve during surgery but this finding was consistent with the short duration of symptoms, (Depo. p. 21-22). Dr. Martimbeau could not determine how long the claimant had CTS except by the claimant’s history.

Dr. Martimbeau was not aware that the claimant was a weight lifter, however, he stated that athletes usually complain of back, shoulder and elbow injuries, not CTS (Depo. p. 13).

MR. ARNOLD

If you are involved in a job which requires the use of the hands, but only every five or ten minutes with activities during the period of time between those

intervals which does not require any type of twisting, grasping, gripping, that sort of thing, would that decrease the chance that those activities were implicated in the development of the condition?

DR. MARTIMBEAU:

Well, there is a gray area, I mean where nobody can answer that kind of a question.

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MR. ARNOLD:

If you have a combination of a short period of duration from a standpoint of the length of time that an individual has been on the job, in this case two weeks to a month, and combined with that short duration, a job which does not require constant or even frequent use of the hand in the activities such as you have described, would that tend to suggest that perhaps the job activities were not the cause of the condition?

DR. MARTIMBEAU:

I don't know. I cannot answer that. There is a gray area, as I said, I mean, where it is not that specific.

### **FINDINGS AND CONCLUSIONS**

As this claim arose after July 1, 1993, this case is governed by Act 796 of 1993 which must be strictly construed, Ark. Code Ann. §11-9-704, §11-9-717. The respondents have controverted this claim, contending the injury did not arise out of and in the course of employment.

“Arising out of the employment” refers to the origin or cause of the accident and the phrase “in the course of employment” refers to the time, place and circumstances under which the injury occurred. Gerber Products v. McDonald, 15 Ark. App. 226, 692 S.W.2d 879 (1985).

The test for arising out of the employment requires that a causal connection exist between the injury and the employment. The injury must be a natural or probable consequence or incident of the employment and a natural result of one of its risks. J & G Cabinets v. Hennington, 269 Ark. 789, 600 S.W.2d 916 (Ark. App. 1980).

When asked about the causal connection between the claimant's job duties and CTS, Dr. Martimbeau commented that determination was a “gray area”. I find that Dr. Martimbeau's opinion

is equivocal and not stated with a reasonable degree of medical certainty as required by Ark. Code Ann. §11-9-102)(16)(B). Frances v. Gaylord Continer Corp., 341 Ark. 527, 20 S.W.3d 280 (2000).

Accordingly, I find the claimant has failed to meet his burden of proof by a preponderance of the credible evidence of record.

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on July 18, 2007.
2. The claimant has failed to prove by a preponderance of the credible evidence of record that he sustained a gradual injury, caused by rapid and repetitive motion arising out of and in the course of his employment which produced physical bodily harm, supported by objective findings, which was the major cause of disability or the need for medical treatment, pursuant to A.C.A. §11-9-102.

This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

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ELIZABETH W. HOGAN  
Administrative Law Judge