

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F705987

TONY C. ROBBINS, EMPLOYEE	CLAIMANT
HEALTH PARK HOSPITAL, SELF-INSURED EMPLOYER	RESPONDENT
RISK BENEFITS RESOURCES, THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED APRIL 8, 2008

Hearing before Administrative Law Judge Richard B. Calaway on November 29, 2007, in Hot Springs, Garland County, Arkansas.

Claimant represented by Mr. Donald Pullen, Attorney at Law, Hot Springs, Arkansas.

Respondents represented by Mr. Guy Alton Wade, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On November 29, 2007, the above-captioned claim was heard in Hot Springs, Arkansas. A prehearing conference took place on August 28, 2007. A prehearing order entered that same day pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

Stipulations

At the hearing, the parties discussed the stipulations set forth in Commission Exhibit

1. They are the following, which I accept:

1. The employee/employer relationship existed at all pertinent times, including April 1, 2007.
2. Respondents at first accepted as compensable a claim based on bilateral carpal tunnel syndrome.

The hearing record reflects that a stipulation was offered by Respondents that Claimant's temporary total disability rate was \$320.00 and his permanent partial disability rate was \$240.00. But because the record does not show that Claimant agreed to that stipulation, it is not accepted.

Issues

At the hearing, the parties discussed the issue set forth in Commission Exhibit 1. Claimant added three additional issues, resulting in the following being litigated:

1. Whether Claimant sustained a compensable injury in the form of carpal tunnel syndrome.
2. Whether Claimant is entitled to reasonable and necessary medical treatment.
3. Whether Claimant is entitled to temporary total disability benefits from July 7, 2007 through August 2, 2007.
4. Whether Claimant is entitled to a controverted attorney's fee.

Contentions

Claimant:

1. The Claimant contended that he sustained compensable bilateral carpal tunnel syndrome during his employment with the Respondent employer for which he should be awarded benefits, including temporary total disability from July 7, 2007 through August 2, 2007, as well as reasonably necessary medical and related expenses. An attorney's fee for controversion was also requested. Other possible issues were reserved.

Respondents:

1. The Respondents contended that the Claimant's condition was not related to work activity and was not compensable.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record as a whole, including medical reports, documents, and other matters properly before the Commission, and having had an opportunity to review the testimony of the witnesses, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2002):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations reached by the parties and set forth above are reasonable and are hereby accepted.
3. Claimant has not proven by a preponderance of the evidence that he incurred a compensable injury; namely, that his bilateral carpal tunnel syndrome arose out of and in the course of his employment at Respondent HealthPark Hospital.
4. Because of the above finding, the balance of the issues are moot and will not be addressed.

CASE IN CHIEF

Summary of Evidence

_____ Three witnesses testified at the hearing: Claimant, Chris Henson and Michael Moffit. Also, the transcript of the November 1, 2007 deposition of Dr. David Rhodes was received into evidence.

In addition to the prehearing order discussed above, the exhibits admitted into evidence in this case consist of the following: Claimant's Exhibit 1, a compilation of Claimant's medical records consisting of one index page and 17 individually numbered pages thereafter; and Respondents' Exhibit 1, a transcript of the deposition taken of Dr. Rhodes, consisting of 29 pages of testimony and 35 unnumbered pages of exhibits thereafter.

Testimony-Hearing

Tony Curtis Robbins. Claimant testified as follows:

He is 45 years old. In July 2006, he went to work for Respondent HealthPark, where he worked as Materials Coordinator. He also performed some accounts payable work. His job required that he place orders and key orders and invoices into the computer. Prior to going to work there, he worked at National Park Medical Center 15 years, where he held a similar position—placing orders and tracking inventory. There, he had a large, L-shaped desk with a high-backed chair. He stated that the physical therapy department at National Park checked each work station to make sure that it was ergonomically correct. At HealthPark, Claimant shared a small office with Chris Henson, and was stationed at a desk four feet long and two feet wide. The computer monitor sat on one corner of the desk, and the keyboard was in a tray attached to the underside of the table. There were no supports

for his arms, elbows or wrists. According to Claimant, before the onset of his symptoms, this configuration was uncomfortable and caused him to feel tired. While he first testified that no changes were made to this setup, he later stated that he and Henson went to Office Depot and bought wrist pads and monitor risers, and that they traded chairs with someone. These changes did not help. Claimant stated that he spent three to four hours per day, on average, using the keyboard at HealthPark, as opposed to six hours at National Park. This period at the keyboard was spread out over the day, with one hour in the mornings placing orders and two hours handling invoices.

Claimant stated that prior to going to Respondent HealthPark, he never had any problems with his wrists or hands. He had never been treated for a Vitamin B-12 deficiency or a similar malady. While at one point Claimant stated that his problems began after nine months at HealthPark, he stated at another point that it was in February 2007 when he began experiencing symptoms—numbness in his fingers, hands and wrists and sometimes even into his shoulders. His left wrist and hand were worse than those on the right. While he might have mentioned this problem casually at work, he did not report it. The pain increased. Because the problem did not improve, he saw his personal physician, Dr. Scott Anderson, on April 20, 2007. Dr. Anderson ordered a nerve conduction study, which showed bilateral carpal tunnel syndrome.

Claimant reported his diagnosis to Michael Moffit at Respondent HealthPark on April 23, 2007. Claimant filled out a claim form. Brooke Moseley, a physical therapist, was tasked with evaluating Claimant's work station. While she made recommendations, they were not implemented. Dr. Anderson on July 2, 2007 placed him on restricted duty, but HealthPark did not offer him a job within the prescribed limitations. Anderson also referred

Claimant to Dr. Lawrence Dodd, an orthopedist. However, Respondents did not approve of the referral. Instead, he saw Dr. David Rhodes on July 23, 2007. Claimant stated that Rhodes only saw him for five minutes, but did nothing other than take x-rays—he did not manipulate Claimant’s wrists or perform any other examination to test his sensations in them.

Claimant obtained another referral and used his own medical insurance to see Dr. Dodd on July 25, 2007. Dodd performed surgery the next day on the left carpal tunnel, which was the worse of the two. Claimant stated that the procedure helped, but that he still experiences some pain. He did not undergo treatment for his right carpal tunnel syndrome because he lost his health insurance. Claimant has not returned to Dodd since he received a full release on August 6, 2007. He testified that the symptoms in his right wrist and hand are not as bad as they were previously because he is no longer doing any keying. While Dr. Dodd has told him that he is welcome to seek a position doing keyboard work, and he has been looking for a job, he is not currently employed—and has not worked since he was taken off work July 2, 2007.

When questioned by Respondents, Claimant testified that he completed the tenth grade and has a graduate equivalency degree. After working odd jobs as a child, including time at his father’s delivery service, he worked at South Park Pharmacy, stocking, delivering, and handling the cash register. Thereafter, he went to work for National Park, where he initially worked as a courier. From 2000 until July 24, 2006, he worked in the purchasing/inventory control area, working on the computer most of the day.

Claimant stated that the National Park position was similar to the one at HealthPark, but the one at the latter involved shelving supplies after he entered them into the inventory.

His day there was split up. He and Chris Henson shared the same type of job and had a similar set-up. But Henson had held that position longer than Claimant.

Claimant performed less data entry at HealthPark than he did in his previous position. He missed a considerable amount of work at HealthPark because, *inter alia*, he contracted a contagious intestinal illness. Claimant was not sure if he had worked a full 40-hour week prior from July 27, 2006 through February 2007.

Claimant stated that Respondent HealthPark did not accommodate his light duty restriction. While Moseley came to see him about his workstation setup, no improvements or modifications were made.

Claimant testified that he previously suffered a compensable back injury while working for Brandon House Furniture. He was off work for 18 months, obtained a permanent partial disability rating, and settled his claim. In addition, he has injured himself on two occasions as a result of falls that occurred after he had become intoxicated.

He admitted that at his deposition, he stated that his visit with Dr. Rhodes was about a minute and a half, while at the hearing he testified that it was under five minutes. His treatment has been paid for by his health insurance.

His personal physician, Dr. Anderson, has suggested that he stop smoking and drinking. In addition to recommending that Claimant attend Alcoholics Anonymous, Dr. Anderson has prescribed him Naltrexone.

Claimant applied for unemployment benefits on July 12, 2007. He did not initially receive benefits because he failed to show up for work for three days, in violation of company policy. Currently, his average day consists of washing dishes, sweeping, mopping, doing laundry, playing with his dog, and watching television.

Chris Henson. Called by Respondents, Henson testified as follows:

He has been employed by Respondent HealthPark for four years as a buyer—handling the shipping, receiving and purchasing for the hospital. This is essentially the same job that Claimant did while he worked there. Henson was on the job two years before Claimant. The two worked together on a regular basis, and shared the same office space.

Henson described the tasks in his job as follows:

Well, again, once a request is made, it is entered into the computer to create a purchase order, so there is data entry. The purchase order is sent to the manufacturer, the vendor. And then, when UPS, Fed Ex, you know, something comes in, the boxes are opened; we pull the packing slips, match those to the P.O.; and then file those; and then there is some data entry on receiving it into our system, just telling our system, yes, we received one of these whatever it is. And then labeling that item and putting it on the shelf. I mean, that's the meat of our day. Now, does it always work and flow just like that? No. I mean, you're putting out fires and doing whatever is needed.

While Henson testified that his duties vary from day to day, he still handles purchases and receipts each day. But this does not require full-time work on the computer. He is up and down, doing the tasks described above. The office that Henson and Claimant share contains two desks, two chairs, two computers, and a file cabinet. The desks are approximately the same size, and each has a keyboard tray.

Henson stated that Claimant had been off work for various health problems. When he was, Henson had to handle the tasks for both positions. This occurred from July 2006 through and including February 2007.

When questioned by Claimant, Henson testified that Claimant was hired because Respondent HealthPark opened a fourth operating room and added some new doctors, making it busier at the hospital. Once Claimant was hired, Henson's workload decreased,

since the two shared responsibilities. The office had the same set-up before Claimant came to work there. At one time, Henson used the desk that Claimant had. Claimant's desk was a computer desk without drawers, but had a three-drawer file cabinet underneath it for storage. While Henson had a regular desk, he stated that the location of the computer and the keyboard was the same for both desks.

Henson stated that Claimant complained about his wrists, even to others; but Henson could not recall when this occurred or who the other people were. He recalled Brooke Moseley, the therapist, discussing with Claimant how to make his workstation more ergonomically correct. His area was modified; the monitor was placed on a riser and the keyboard was moved to the top of the desk. Henson went with Claimant to Office Depot to purchase the riser and a pad to go with the keyboard. However, Claimant continued to complain about pain in his wrists even after these modifications were made.

Michael Moffit. Called by Respondents, Moffit testified as follows:

He is the Director of Human Resources for Respondent HealthPark. He was familiar with Claimant and his duties and responsibilities at HealthPark. Moffit stated that Claimant had requested to leave work early on a Friday. His supervisor explained that because a particular project needed finishing, Claimant had the option of coming in the next day to complete it. However, Claimant simply left the workplace Friday and did not come in Saturday. By the following Wednesday, he still had not reported for work. Because of the hospital's policy was that failure to show for work or to call in for three days was the equivalent of a resignation, on July 12, 2007 Moffit wrote Claimant to state that his resignation had been accepted.

Prior to this, Claimant had informed Moffit that he was having pain in his arms, making it difficult for him to sleep. Claimant had filled out a Form AR-N, and the two had a lengthy discussion on the claim process. Moffit stated that he was aware that Dr. Anderson had given Claimant a limited or light duty slip. The doctor requested that Claimant not be on the keyboard for more than an hour at a time and not have any repetitive motion for more than three hours. However, Moffit stated that the position did not require these things. As for the 20-pound lifting restriction, that was accommodated. To further ensure that his restrictions were accommodated, Claimant was assigned the task of scanning into the computer six years of documents from the accounting department. This was one of the projects assigned to him on July 6, 2007. Because it was important, he was asked to complete it. Moffit stated that had Claimant returned to work, he would have been given additional light duty assignments.

Moffit stated that Claimant only worked a full 80 hours in a pay period one time. While he also worked more than one 40-hour week during his tenure, he was off for significant periods for various reasons, including an infectious illness and a head injury.

When questioned by Respondents, Moffit clarified that Claimant's limitation regarding keyboard use was only one hour per day, and that was accommodated. While it would have been up to Claimant's supervisor and not Moffit what his duties were, Moffit was aware that his limitations were accommodated. While he was aware that the therapist had made some recommendations regarding changes to Claimant's workstation, he only knew of a couple of changes that had been made. In addition to the riser and the moving of the keyboard, the therapist had also recommended that the desk be raised, and this was done using boards. There has been other situations where the therapist came in to make

a workstation more ergonomically correct. These were not done until requested by an employee.

Testimony-Deposition.

Dr. David Rhodes. Dr. Rhodes was deposed on November 1, 2007. As noted above, the transcript of his deposition was admitted as Respondents' Exhibit 1. He testified as follows:

He is licensed to practice in Arkansas and his specialty is hand surgery, which falls under orthopedics. He has diagnosed carpal tunnel syndrome before.

Dr. Rhodes stated that he evaluated Claimant on July 19, 2007, and produced a report of that evaluation, which was made an exhibit to the deposition. Claimant was referred to him. Dr. Rhodes received a nerve conduction study that Dr. Anderson had performed, along with Anderson's notes, which were also made an exhibit. He reviewed these notes prior to examining Claimant. He took a history from Claimant, and conducted tests to see if his condition was consistent with his complaints.

According to Dr. Anderson's notes, Claimant first came to him with hand complaints in February 2007. Claimant stated that it was this month when he started having tingling and numbness in both his hands. He was initially treated conservatively with bracing. He related that he had a nerve conduction study that with consistent with mild carpal tunnel syndrome. Claimant filled out a form describing his occupation, and that form was made an exhibit to the deposition.

In contrast to Claimant's deposition testimony that Dr. Rhodes only examined him for a minute and a half and did not touch his hands or examine him at all, Rhodes testified that he was with Claimant longer than that and conducted a physical examination. He

checked his range of motion and feeling in his hand and did a Phalen's and Tinel's sign. Dr. Rhodes also checked to see if Claimant had any sensation in the median nerve distribution. He stated that he also took x-rays to see if there were any other pathological processes that would explain Claimant's symptoms.

Dr. Rhodes testified that as a result of his examination, he made the following findings:

Basically, with the patient's previous history of Vitamin B-12 deficiency and a folic acid deficiency, those are both problems that can cause numbness and tingling consistent with carpal tunnel syndrome. Also, the patient told me that he had worked at the job for six to seven months, and in my opinion, that would be not long enough for the patient to acquire carpal tunnel syndrome from the work. It was my opinion that greater than 50—or I'm sorry, less than 50 percent of the patient's work would be responsible for his diagnosis of mild carpal tunnel syndrome.

He reiterated that Claimant's job was not the major cause of his carpal tunnel syndrome. In addition to the Folic acid and Vitamin B-12 deficiencies, Rhodes noted that Claimant had a history of alcohol abuse; and that alcohol abuse can cause some neuropathic-type findings and the deficiencies noted above.

As for the fact that Claimant worked in a similar position for another employer for six years preceding his tenure with Respondent HealthPark, Dr. Rhodes testified that the previous position, along with the Folic acid and Vitamin B-12 deficiencies, would more likely be the cause of his symptoms than his six or seven months with HealthPark. Dr. Rhodes stated that there are conditions completely unrelated to any traumatic injury that can cause carpal tunnel syndrome.

Following Dr. Rhodes' examination, he gave Claimant a note that indicated that he did not believe his complaints were work-related, and he released him to full duty with no

restrictions on July 19, 2007. Based on the medical records and the examination, Dr. Rhodes opined that the following was the cause of Claimant's carpal tunnel complaints:

If I had to hazard a guess, it could have been due to his previous work, or it basically—due to the fact that he was also Vitamin B-12 deficient and folic acid deficient, I think that had a key role in his symptoms of numbness and tingling in his hands.

He stated that his testimony was to a reasonable degree of medical certainty.

When questioned by Claimant, Dr. Rhodes testified that his x-rays did not show any other pathology that would be causing Claimant's hand problems. With regard to the Vitamin B-12 and Folic acid deficiencies, he could not recall if Claimant informed him of that or if he gleaned it from the medical records. Dr. Rhodes could not state how severe the deficiency actually was or how severe it would have to be before it would cause carpal tunnel syndrome. When presented with Claimant's test results for April 20, 2007, Rhodes stated that it showed a Vitamin B-12/Folic acid level within normal limits.

Dr. Rhodes confirmed that his assessment was that Claimant had carpal tunnel syndrome, based on the nerve conduction study. He was not aware that Claimant, subsequent to seeing Rhodes, had a left carpal tunnel release. Rhodes stated for a patient such as Claimant, who had mild carpal tunnel, he first would treat conservatively, proceed to steroid injections, and only then resort to surgery. He stated that a surgeon cannot tell, based on observation during surgery, if carpal tunnel syndrome is caused by a Vitamin B-12 deficiency versus rapid repetitive motion.

As to the effect of Claimant having or not having an ergonomically correct workstation, Dr. Rhodes opined that ergonomic correctness will only slow and not prevent the onset of carpal tunnel syndrome. While he stated that working somewhere for six

months would not cause carpal tunnel, a six-month period of Vitamin B-12 deficiency would. He would not attribute a job of less than one year in length as the cause of carpal tunnel syndrome. While he believed that rapid repetitive motion could be a cause, six to seven months would not suffice.

On re-direct examination by Respondents, Dr. Rhodes testified that a person's Folic acid or Vitamin B-12 level could swing based upon that person's diet or alcohol abuse. It would thus be possible for Claimant to have a normal reading within a month and a half of being diagnosed with a deficiency.

Records

Claimant's Exhibit 1; Respondents' Exhibit 1. The records of Claimant that were introduced at the November 29, 2007 hearing and are part of Claimant's Exhibit 1 and Respondents' Exhibit 1 reflect the following:

On April 4, 2006, Claimant presented to Dr. Scott Anderson as still drinking and smoking, and not watching his diet. He returned on July 20, 2006, still having a drinking problem. Claimant stated that "he is still drinking about 6 to 8 beers per day which is better for him, but is still too much and would still like to try and be able to quit, but he is unable to do so on his own."

On April 20, 2007, Claimant presented to Dr. Anderson with pain in both of his arms, with weakness in the right hand. He also stated that both hands had been going numb at night and hurting him. Dr. Anderson assessed him as most likely having bilateral carpal tunnel syndrome, based on symptomology, along with possible tendinitis, impingement syndrome and radiculopathy. He advised Claimant to go to Alcoholics Anonymous and

quit drinking. On that date, Claimant's Vitamin B-12 and Folate was 322 pg/ml, with the normal range being from 211 to 911.

Claimant underwent a nerve conduction study on May 2, 2007. The median DSL was abnormal bilaterally, the median SNAP amplitude was abnormal on the right, and the median-ulnar DSL difference was bilaterally abnormal. The study was found to be abnormal and consistent with a mild bilateral median neuropathy at the wrist. Claimant reported on the date of the study that "wrist braces are helping tremendously." Despite the study results, Dr. Anderson on May 2 wrote that Claimant could return to work with no restrictions on May 3, 2007.

When Claimant returned to Dr. Anderson on June 1, 2007 for a follow-up regarding, *inter alia*, his carpal tunnel syndrome and alcohol abuse, he was noted as having a "Hx of ETOH abuse. Folic Acid Deficiency. B12 Deficiency."

On June 29, 2007, Dr. Anderson wrote:

[Claimant] has carpal tunnel syndrome bilaterally. [H]e is having trouble working due to pain. He may work but needs typing & keyboarding limited to no more than 1 hour a day, limited repetitive motion activities to 3 hours a day. No lifting greater than 20 lbs. Restrictions should be in place until evaluated by work comp doctor. Above to be as of 7/2/07.

Dr. David Rhodes saw Claimant on July 19, 2007. After reviewing his history and records, performing a physical examination (including testing for Phalen's and Tinel's signs), and reviewing Claimant's x-rays (which were unremarkable), Rhodes assessed him as having bilateral carpal tunnel syndrome. As for his plan, he wrote:

1. Since the patient has been working at his job for six to seven months prior to hav[ing] symptoms and since he has a history of vitamin B12 deficiency and folic acid deficiency, it is my opinion that less than 50% of his work is responsible for his current diagnosis. I do recommend

that the patient be treated for this, however, I do not believe it is work-related.

2. He may therefore return to work full duty as this is not work-related.

Claimant was referred to Dr. Lawrence Dodd on July 25, 2007. He presented with bilateral carpal tunnel syndrome that was greater on the left than the right, which had been bothering him for six to seven months. Claimant requested, and Dr. Dodd agreed, to perform releases on both wrists at the same time. However, the record reflects that on July 26, 2007, only a left release was performed. Dr. Dodd wrote that the left was "more symptomatic." On August 6, 2007, the sutures were removed. While Claimant was unemployed, Dr. Dodd wrote that he was free to seek a position requiring keyboard work. Claimant asked for pain medications on August 17, 2007, and Dr. Dodd prescribed Darvocet.

On September 5, 2007, Claimant's counsel wrote Dr. Dodd and asked for his medical opinion within a reasonable degree of medical certainty whether Claimant's work at Respondent HealthPark was the major cause of his carpal tunnel syndrome. He asked that Dr. Dodd assume the following:

Tony Robbins never experienced any problems with his hands or wrists prior to April, 2007 when he consulted with his family physician, Scott Anderson, who diagnosed bilateral carpal tunnel. There is no past history of problems with his hands or wrists at any of his employments prior to Healthpark Hospital where he began on July 2006 as a materials coordinator which required some lifting, but also 4-5 hours of keyboard work placing orders. He previously was employed by National Park Medical Center from February 1993 through July 2006 in a similar capacity with the keyboard being required to place materials orders. As stated, he experienced no difficulty until his job at Healthpark. His workstation at Healthpark was situated on a small table which did not allow any supports for his wrists or arms such the ergonomically approved work station at National Park which was set up by Steve Burns. The physical therapist at Healthpark stated his work station

was certainly not ergonomic for his keyboard after he told her about his wrist pain.

In response, Dr. Dodd on September 19, 2007 wrote that “[a]fter reviewing Mr. Robbins[’s] history, I do feel that Mr. Robbins[’s] work was the major cause of his carpal tunnel symptoms that eventually required carpal tunnel release on 07/26/07.”

ADJUDICATION

A. Compensability

Claimant has contended that he has suffered a compensable injury in the form of bilateral carpal tunnel syndrome. Under Ark. Code Ann. § 11-9-102(4)(A)(ii)(a) (Repl. 2002), “compensable injury” means:

(ii) An injury causing internal or external physical harm to the body and arising out of an in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:

(a) Caused by rapid repetitive motion. Carpal tunnel syndrome is specifically categorized as a compensable injury falling within this definition[.]

Claimant had the burden under Ark. Code Ann. § 11-9-102(4)(E) of establishing compensability by a preponderance of the evidence. *Stutzman v. Baxter Healthcare*, 99 Ark. App. 19, ___ S.W.3d ___ (2007).

The medical evidence, supported by objective findings, shows that Claimant was diagnosed by Drs. Anderson, Dodd and Rhodes, following a nerve conduction study, as having bilateral carpal tunnel syndrome. It is unnecessary to prove rapid repetitive motion when there is a diagnosis of carpal tunnel syndrome. *Kildow v. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W.2d 190 (1998); *Stevenson v. Frolic Footwear*, 70 Ark. App. 383, 20 S.W.3d 413 (2000).

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; and (3) the injury was a major cause of the disability or need for treatment. Ark. Code Ann. § 11-9-102(4)(A)(ii) & (E)(ii) (Repl. 2002).

I find that the Claimant has not proven by a preponderance of the evidence that his carpal tunnel syndrome arose out of and in the course of his employment for Respondent HealthPark.

Claimant testified that he worked for Respondent HealthPark for seven months (at another point, he testified that it was nine) before he began experiencing pain and numbness in his fingers, hands and wrists. Before that, he felt uncomfortable while working at his workstation there. He had a table that was approximately four feet long and two feet wide. His keyboard was attached to the underside of the table. He stated that he and Christopher Henson, his office mate who had the same set up, ultimately went to Home Depot and purchased monitor risers and wrist pads. His testimony was that he took these steps on his own because his concerns were not being addressed. Henson's testimony was that he held the same job and worked in the same area two years before Claimant was hired. The data entry required for the position was not full time. The two had similar work station setups, including keyboard trays under the desks.

Claimant testified that his work area was not ergonomically correct, unlike his area at National Park Medical Center, where he worked 15 years in a similar position. He stated that Brooke Moseley, a therapist, was assigned to evaluate his work area. However, her

recommendations were not implemented. Michael Moffit contradicted this testimony, stating that not only were the riser and wrist pad modifications made, but that Claimant's desk was raised, using boards, per the recommendation of Moseley. Henson similarly testified that the riser and wrist pad were obtained after Moseley's evaluation.

Claimant's job at Respondent HealthPark, that of Materials Coordinator, required that he key in certain things. He estimated that he worked three to four hours a day on the keyboard, and that this was broken up over the course of the day. Henson essentially corroborated this. On top of this, both Claimant and Moffit testified that Claimant missed a substantial amount of work at HealthPark.

While Claimant denied being treated for a Vitamin B-12 deficiency or a similar malady, his records reflect that Dr. Anderson on June 1, 2007 noted that he had a history of such a deficiency, along with alcohol abuse. He admitted to having a drinking problem.

Claimant's testimony about the length of time that Dr. Rhodes saw him and what he did for him not only conflicted with his deposition testimony, but also with that of Rhodes, who performed a physical examination on Claimant. The record of Claimant's visit reflects this examination was performed.

The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

Based upon my observation of these witnesses, I credit the testimony of Henson, Moffit and Rhodes over that of Claimant.

As for the physicians who offered opinions in this case, Dr. Rhodes stated that Claimant's position at Respondent HealthPark was not the major cause of his carpal tunnel syndrome not only because he had a history of Vitamin B-12 and Folic acid deficiency, but that his seven-month tenure at HealthPark was not long enough to cause carpal tunnel syndrome, regardless of the ergonomic set up of his workstation, and that Claimant had a documented alcohol problem, which can cause neuropathic-type findings. On the other hand, Dr. Dodd, who performed Claimant's left carpal tunnel release, opined that his Materials Coordinator position was the major cause of his injury. In rendering this opinion, Claimant's attorney asked that he presume, *inter alia*, that Claimant had no symptoms of carpal tunnel before coming to HealthPark, that he worked in a similar position, but with an ergonomically correct setup, with a previous employer with no problems, and that his position at HealthPark did not allow any supports for his wrists or arms and worked at the keyboard there for four to five hours a day.

The Commission is authorized to accept or reject a medical opinion and is authorized to determine its medical soundness and probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002); *Green Bay Packing v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 692 (1999). In *Cooper v. Textron*, 2005 AWCC 31, Claim No. F213354 (Full Commission Opinion filed February 14, 2005), the Commission addressed the standard when examining medical opinions concerning causation:

Medical evidence is not ordinarily required to prove causation, i.e., a connection between an injury and the claimant's employment, *Wal-Mart v.*

Van Wagner, 337 Ark. 443, 990 S.W.2d 522 (1999), but if a medical opinion is offered on causation, the opinion must be stated within a reasonable degree of medical certainty. This medical opinion must do more than state that the causal relationship between the work and the injury is a possibility. Doctors' medical opinions need not be absolute. The Supreme Court has never required that a doctor be absolute in an opinion or that the magic words "within a reasonable degree of medical certainty" even be used by the doctor; rather, the Supreme Court has simply held that the medical opinion be more than speculation; if the doctor renders an opinion about causation with language that goes beyond possibilities and establishes that work was the reasonable cause of the injury, this evidence should pass muster. See, *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001). However, where the only evidence of a causal connection is a speculative and indefinite medical opinion, it is insufficient to meet the claimant's burden of proving causation. *Crudup v. Regal Ware, Inc.*, 341, Ark. 804, 20 S.W.3d 900 (2000); *KII Construction Company v. Crabtree*, 78 Ark. App. 222, 79 S.W.3d 414 (2002).

Based upon my review of the evidence, I am not inclined to credit Dr. Rhodes' findings. Not only is the Vitamin B-12 and Folic acid deficiency documented, but Claimant admittedly had an alcohol abuse problem as well. This was not part of what was presented to Dr. Dodd to assume as part of rendering his opinion. The medical records in evidence do not indicate that Dodd was otherwise aware of these conditions. And as Dr. Rhodes testified, a surgeon cannot tell, simply based on observation, whether carpal tunnel syndrome was caused by rapid repetitive motion versus a vitamin deficiency.

Moreover, Dodd was asked to assume that Claimant performed four to five hours of keyboard work per day, when his testimony was that it was only three to four hours. On the other hand, Dr. Rhodes took into account Claimant's previous employment and short tenure at HealthPark, among other matters, in providing his opinion.

In *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W.2d 644 (1998), the Arkansas Supreme Court held that there is a two-part test for determining whether an injury is caused by rapid repetitive motion: (1) the tasks must be repetitive, and (2) the repetitive

motion must be rapid. If the first element is not met, the second is not reached. *Id.*; *Westside High School v. Patterson*, 79 Ark. App. 281, 86 S.W.3d 412 (2002). Moreover, “even repetitive tasks and rapid work, standing alone, do not satisfy the definition. The repetitive tasks must be completed rapidly.” *Malone, supra*.

Claimant’s position did not involve rapid repetitive motion, based on the evidence showing that he performed data entry only a few hours a day, in segments. Again, under *Kildow* and *Stevenson, supra*, Claimant need not prove that his job required rapid and repetitive motion because he has been diagnosed as having carpal tunnel syndrome. But the fact that his job did not entail rapid repetitive motion is evidence that his carpal tunnel syndrome did not arise out of and in the course of his work at HealthPark. See *Owens v. American Imaging*, 2007 AWCC 27, Claimant No. F602699 (Full Commission Opinion filed March 20, 2007). In sum, he has not shown that his carpal tunnel syndrome is compensable.

B. Balance of issues

Because of the above finding regarding the threshold issue of compensability, the other issues litigated at the hearing—whether Claimant is entitled to reasonable and necessary medical care, temporary total disability benefits and a controverted attorney’s fee—are moot and will not be addressed.

CONCLUSION

In proving that his bilateral carpal tunnel syndrome is compensable, Claimant bears the burden of proving by a preponderance of the evidence that, *inter alia*, his injury arose

out of and in the course of his job at Respondent HealthPark. He has not done this.

Therefore, his claim must be, and hereby is, denied and dismissed.

IT IS SO ORDERED.

Hon. O. Milton Fine II
Administrative Law Judge