

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F611876

ELODIA SANTILLAN SOTO

CLAIMANT

TYSON FOODS, INC.  
SELF INSURED

RESPONDENT

OPINION FILED **SEPTEMBER 30, 2008**

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondent represented by DIANE GRAHAM, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on July 7, 2008, in Springdale, Arkansas. A pre-hearing order was entered in this case on April 22, 2008. The pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Prior to the commencement of the hearing, the first stipulation was amended to reflect that on all relevant dates, including July 6, 2006, the relationship of employee-self insured employer existed between the parties. 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, including July 6, 2006, the relationship of employee-self insured employer-TPA existed between the parties.
2. The appropriate weekly compensation rates are \$239.00 for total disability and \$179.00 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 a cumulative trauma compensable injury in the form of bilateral carpal tunnel syndrome.
2. The claimant's entitlement to medical services for her bilateral carpal tunnel syndrome.

In regard to these issues, the claimant contends:

“Claimant was injured on June 6, 2006. Her hands and wrist have been injured by the deboning she was doing. Her treating physician recommended treatment that has not been authorized.”

In regard to these issues, the respondent contends:

“Respondent contends that any claim for the April 9, 2001 injury is barred by the statute of limitations. In 2001, claimant was transferred to a job in the supply room to accommodate the permanent restrictions placed on her. No workers' compensation benefits were paid to or on behalf of the claimant after June 1, 2001. In 2006 claimant performed the debone job on one occasion for 30 minutes. Respondent denies that claimant sustained a work related injury in the form of bilateral carpal tunnel syndrome on or about June 6, 2006. Claimant's carpal tunnel syndrome pre-existed that date and has been present since April 9, 2001. Alternatively, respondent contends that claimant temporarily aggravated her pre-existing condition and the temporary aggravation ended no later than two weeks after July 6, 2006.”

## DISCUSSION

### I. COMPENSABILITY

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The first issue to be addressed is whether the claimant's bilateral carpal tunnel syndrome represents a “compensable injury”, as that term is used in the Act. The burden rests upon the claimant to prove all of the facts necessary to establish that her bilateral carpal tunnel syndrome is “compensable”.

The first of these required facts are contained in Ark. Code Ann. §11-9-102(4)(D). This subsection mandates that the claimant “establish” by medical evidence the actual existence of the physical injury or condition, which she alleges to be compensable. In this case, bilateral carpal tunnel syndrome. This subsection further requires that 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).

After consideration of all the evidence presented, it is my opinion that the medical evidence is sufficient to “establish” the actual existence of bilateral carpal tunnel syndrome. Further, the evidence reveals that the existence of this condition is supported by the independent observation of physical findings beyond the claimant’s voluntary control (i.e. objective findings).

All of the various physicians, who have seen and evaluated the claimant, have diagnosed the presence of bilateral carpal tunnel syndrome. Further, the medical evidence shows that the presence of this condition is supported by purely objective findings. These findings include neurological abnormalities noted on electrodiagnostic testing (i.e. EMG-NCV) and by visual observations made by Dr. Kelly during the right carpal tunnel release on February 21, 2008. Thus, the claimant has satisfied all of 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 her bilateral carpal tunnel syndrome satisfies the definitional requirements for a “compensable injury” that are contained in Ark. Code Ann. §11-9-102(4)(A)(ii)(a). These definitional requirements are:

- (1) The injury must arise out of and occur in the course of the employment;
- (2) The injury must cause internal or external physical harm to the claimant’s body;
- (3) The injury must be caused by rapid repetitive motion or be in the form of carpal tunnel syndrome.

Clearly, the evidence reveals that the claimant’s alleged compensable injury is in the form of carpal tunnel syndrome. Thus, she has unquestionably satisfied the third definitional requirement of the foregoing subsection.

There is also no question that the claimant's bilateral carpal tunnel syndrome has resulted in internal physical harm to her body. The existence of this physical harm is shown by the claimant's description of her symptoms in her testimony and by the neurological abnormalities noted on the EMG-NCV. Thus, the claimant has satisfied the second definitional requirement of the aforesaid statute.

In order to satisfy the remaining definitional requirements (i.e. that her bilateral carpal tunnel syndrome "arose out of and was in the course of" her employment) the claimant must show a causal connection between her employment activities with this respondent and her bilateral carpal tunnel syndrome. However, the claimant is not required to prove that her employment activities were the sole or even "major cause" of the bilateral carpal tunnel syndrome, itself. As will be discussed later, Ark. Code Ann. §11-9-102(4)(E)(ii) only requires that the employment related component of the injury or condition must be the "major cause" of the need for medical treatment or of any disability sustained. This subsection does not require that the employment contribution to the total resultant condition be the "major cause" of the "resultant condition" itself.

The evidence shows that the claimant began working for the respondent in early 2001. Her initial position was that of a "deboner". This employment position was clearly hand intensive and involved constant gripping and movement of the hands.

After two to three months in the "deboner" position, the claimant began experiencing difficulties with both of her hands. These difficulties were reported to the respondent and she was sent by the respondent for evaluation and treatment of these difficulties to the Arkansas Occupational Health Clinic. This clinic acts as the respondent's company doctor.

The claimant was immediately diagnosed as suffering from bilateral carpal tunnel syndrome and electrodiagnostic studies were recommended. However, no referral was made, and the claimant was treated conservatively by the company physicians (Dr.

Konstantin Berestnev and Dr. Gary Moffitt). This treatment continued through June of 2001. In a report, dated June 1, 2001, Dr. Gary Moffitt released the claimant to return to employment with certain restrictions. In this report, he made what would later appear to be a rather prophetic statement:

“If she (the claimant) goes back to doing line work, I am certain that she is going to have a reoccurrence of her symptoms.”

Following her release by Dr. Moffitt, the claimant was apparently transferred to the position of supply room attendant. This was still her position in 2006. However, the claimant testified that during the first part of 2006, she would only spend approximately 15 minutes of each 8 hour shift handing out supplies to other employees. She stated that the remainder of her shift involved the cleaning of bathrooms and offices. This entailed cleaning by hand the fixtures in the bathrooms, the floors, the furniture and fixtures in the offices and the floors, and taking out the trash. She testified that at some time in early 2006, she began being supervised by an individual named Maria Larin and that Ms. Larin continued as her supervisor for approximately 6 months. She stated that Ms. Larin would make her go at a faster pace in performing her cleaning duties and would also require her to reclean the bathrooms. According to the claimant’s testimony, these activities caused her to experience a significant increase in the difficulties with her hands.

The claimant stated that in July of 2006, she was advised that her supply/cleaning position was going to be eliminated. At that time, she was transferred back to her initial “debone” position. She stated that she attempted to perform the “debone” position for 2 days, completing a full 8 hour shift the first day and approximately 2 hours the second day. At that point, she was sent back to the supply/cleaning position.

I find the claimant’s testimony concerning her assigned employment activities and the temporal relationships between these activities and the reoccurrence or increase in her carpal tunnel symptoms to be credible. The only evidence that is somewhat contradictory

to the claimant's description is the testimony of Matthew Clawson. Mr. Clawson testified that in 2006, the claimant was put on the deboning line, where he was her supervisor. Mr. Clawson initially testified that the claimant worked in the deboning position for only approximately 30 minutes before he was contacted by the plant nurse and told to take her off the line. However, he also testified that the claimant could have worked an entire 8 hour shift on the previous day. Neither Ms. Larin or any other witness disputed the claimant's description of her required employment activities in the supply/cleaning position.

The claimant testified that she again reported her difficulties with her hands to Ms. Larin, her supervisor, and requested another job. She stated that this occurred shortly after she had been sent back from the debone position to the supply/cleaning position. She stated that Ms. Larin took her to the plant nurse. At that point, she was taken by Ms. Larin and the plant nurse back to the company physician (Dr. Moffitt).

The records of Dr. Moffitt reveal that the claimant was seen on July 6, 2006. In his report of that date to the respondent's plant nurse, Dr. Moffitt indicates that he saw the claimant at the respondent's request. He first stated that the claimant was "doing fine", until the day of her visit on July 6, 2006, when she was told that her supply room position was going to be eliminated. He also indicated the purpose of the claimant's visit was for "job placement". However, he noted a history that the claimant continued to have pain in her right hand and numbness at night that radiated up to her neck. He also recorded a history that the claimant had already tried to work for 2 days in the deboning position and had developed increased pain and discomfort. On his physical examination, he observed positive signs for the presence of bilateral carpal tunnel syndrome, which was worse on the right. It was his recommendation that the claimant receive a reassessment of her carpal tunnel syndrome and possible treatment. Finally, he indicated that the claimant was physically unable, due to her carpal tunnel syndrome, to perform any of the positions for

which he had been provided a work description, including packout support, maintenance, deboner, and general laborer.

\_\_\_\_\_Dr. Moffitt authored a second report to the respondent's plant nurse on July 31, 2006. In this report he discussed the claimant's ability to perform other employment positions for the respondent, including the position of supply room attendant (the position the claimant held during the first half of 2006). In regard to this position, Dr. Moffitt noted that the claimant could possibly safely perform the actual supply clerk duties of this position, but expressed reservations over the requirement to "perform all other duties assigned by her supervisor".

On August 28, 2006, the respondent's plant nurse inquired of Dr. Moffitt for a more detailed description of the limitation he had placed upon the claimant's potential employment activities of "limited gripping". In response Dr. Moffitt interpreted "limited gripping" to limit both the number of times the claimant was to grip, the amount of force required in the gripping, and the position of the wrist required to perform the gripping.

The claimant was again seen by Dr. Moffitt, at the respondent's request, on September 29, 2006. Although the description of the claimant's symptoms was given as "bilateral hand pain and tingling and numbness in her fingers", Dr. Moffitt made a diagnosis of adhesive capsulitis of the left shoulder and diabetes. He indicated that the claimant should be treated by her personal physician for these diagnoses. No diagnosis was made of the claimant's symptoms and complaints involving her hands. Nor was any treatment offered.

On October 2, 2006, Dr. Moffitt again authored a letter to the respondent's plant nurse, Tawnya Ledgerwood. Curiously, on that same date, Dr. Moffitt had apparently received a telephone call from the respondent's plant nurse. The notation of this call stated:

"Also needs added to the dictation that her injury did not aggravate the previous carpal tunnel syndrome."

In his report of that date, Dr. Moffitt again noted that the claimant was again experiencing adhesive capsulitis of the left shoulder, in conjunction with her diabetes and that it was his opinion that this condition was not related to the claimant's employment. In response to the telephone request of the respondent's plant nurse, Dr. Moffitt stated:

“From what I understand, there is a question as to whether or not she possibly could have aggravated a carpal tunnel syndrome by working 3 hours in production over a 3 week period of time. From what I understand, she never did the duties for more than 30 minutes at a time. Although it is possible that she might have developed some temporary inflammation secondary to this, I am highly skeptical that she could have significantly reaggravated a carpal tunnel syndrome with this amount of work, and any type of inflammation that might have occurred from this, in my opinion, most likely would have been self limited and should have abated within a few days to a week or two.”

It would appear that the plant nurse must have provided Dr. Moffitt with the information that the claimant only performed production work for no more than 30 minutes at a time, for no more than a total of 3 hours, over a 3 week period. Clearly, this description of the claimant's activities would be inconsistent with the claimant's testimony, the initial history recorded by Dr. Moffitt on July 6, 2006, and all of the evidence presented.

The claimant was ultimately seen for her hand difficulties by Dr. James Kelly, a plastic surgeon and hand specialist. Nerve conduction studies, which were finally performed at the request of Dr. Kelly, revealed moderate to severe compromise of the median nerves bilaterally in the area of the carpal tunnels, which involved sensory components consistent with demyelination. It was also Dr. Kelly's opinion that the results of these tests demonstrated the presence of moderate to severe bilateral carpal tunnel syndrome with the right worse than the left. He recommended immediate corrective surgery. He also noted that the claimant was experiencing a trigger finger involving the 4<sup>th</sup> finger of her right hand. He also recommended surgical correction of this problem. On February 21, 2008, a right carpal tunnel release and trigger finger release was performed on the claimant by Dr. Kelly. From the reports and records of Dr. Kelly and the testimony of the claimant, this surgical

procedure has provided the claimant with significant relief of her right hand difficulties. A surgical release of the claimant's left carpal tunnel was apparently performed by Dr. Kelly on May 15, 2008. According to the claimant's testimony, the surgical procedures have provided her with significant relief of her hand difficulties.

In a report, dated June 4, 2008, sent to the claimant's attorney, Dr. Kelly expressed his opinion on the causation of the claimant's bilateral carpal tunnel syndrome. In this report he stated:

"I don't feel that the 30 minutes that she was placed on the deboning line has brought on all her symptoms. I rather think that she had carpal tunnel syndrome and that the aggravation was slowly brought on over time even if she was doing a fairly low repetitive job but general day to day use of her hands was slowly brought on and increased her symptoms. The 30 minutes issue I don't think is the actual cause. It may have made her symptoms worse on a temporary basis but certainly as time goes on her symptoms would have worsened as most people's do with carpal tunnel syndrome."

Again, this opinion is apparently based upon Dr. Kelly's understanding that the claimant only worked on the deboning line for 30 minutes, prior to the reoccurrence or increase in her hand difficulties. This assumption is also inconsistent with the greater weight of the credible evidence presented.

The greater weight of the credible evidence shows that the claimant's difficulties with her hands, which have been diagnosed as being in the form of bilateral carpal tunnel syndrome, significantly increased over the first half of 2006. The greater weight of the credible evidence further shows that during this time the claimant was performing hand intensive employment related activities for the respondent. The first of these activities involved the cleaning of restrooms and offices, which the claimant performed for the majority of her work day. Her complaints became even more severe, after the claimant was transferred to the deboning line, where she performed even more hand intensive employment activities for at least an 8 hour shift.

Both the cleaning position and the deboning position would require the claimant to tightly grip and manipulate objects with her hands on a relatively constant basis for significant periods of time. Both of these positions would require the performance of physical activities that were expressly prohibited by Dr. Moffitt, for the express purpose of preventing a reoccurrence or worsening of the claimant's previous bilateral carpal tunnel syndrome that had first manifested itself in 2001. As the expected result of not following the restrictions initially imposed, the claimant's bilateral carpal tunnel syndrome reappeared and progressively worsened.

After consideration of all the evidence presented, it is my opinion that the claimant has proven by the greater weight of the credible evidence the existence of a causal relationship between her employment activities for this respondent during the first part of 2006, and her subsequent bilateral carpal tunnel syndrome. The employment activities being performed by the claimant during this period of time, clearly produced more stress and trauma to the claimant's wrists and hands, than any other non employment related activities being performed at that time. This employment related stress and trauma was clearly sufficiently severe and continuous as to reasonably result in the redevelopment or worsening of the claimant's bilateral carpal tunnel syndrome.

In reaching this decision, I recognize that there is no direct expert medical opinion offered to support the existence of the causal relationship. In fact, both Dr. Moffitt and Dr. Kelly have expressed opinions that could be interpreted as refuting the existence of such a causal relationship. However, both of these physicians have only considered the claimant's "deboning" or line work and have mistakenly assumed that the claimant only performed this position for an extremely limited period of time or less than an 8 hour shift. Neither of these physicians have considered the potential causal role the claimant's hand intensive employment activities in the cleaning position could have played in producing her present bilateral carpal tunnel syndrome difficulties.

However, I would note that Dr. Moffitt has repeatedly opined that strenuous hand intensive activities could cause a reoccurrence of the claimant's bilateral carpal tunnel syndrome. It was to prevent this reoccurrence that he set permanent restrictions upon the claimant performing any strenuous or hand intensive activities for any significant period of time. It is also important to note that when Dr. Moffitt was asked to clear the claimant to perform the supply room position, he was reluctant to do so because the job duties described could have resulted in the claimant exceeding his restrictions. From the evidence presented, it is apparent that the cleaning portion of the claimant's duties in the supply room position did, in fact, exceed the restrictions and limitations imposed by Dr. Moffitt during the first half of 2006.

The claimant has proven that her employment related duties for this respondent in the form of cleaning and deboning, could have reasonably and logically caused the remanifestation of her bilateral carpal tunnel syndrome. The evidence presented fails to show any other equally possible or likely cause of this condition. The claimant has also proven that her bilateral carpal tunnel syndrome remanifested itself within a reasonable period of time after she was required to perform the strenuous hand intensive employment related activities for these 2 positions. These facts are sufficient to satisfy the final definitional requirement of Ark. Code Ann. §11-9-102(4)(A)(ii)(a) that her condition arise out of and occur in the course of her employment, Hall v. Pittman Construction Company, 235 Ark. 104, 357 S.W. 2<sup>nd</sup> 263 (1962).

The final requirement to be addressed is contained in Ark. Code Ann. §11-9-102(4)(E)(ii). This subsection requires the claimant to prove that the employment related injury or contribution to the ultimate resultant condition must be the "major cause" of either the need for medical treatment or any disability that she may have been sustained. The term "major cause" is defined as more than 50 percent of the cause.

The record reveals that the claimant was previously diagnosed with bilateral carpal syndrome in 2001. The claimant also testified that she had experienced some degree of continuous difficulties with her hands, following this initial episode. Clearly, the claimant's bilateral carpal tunnel syndrome in 2001, could have played some causal role in producing the ultimate condition she was experiencing in 2006. However, an employment related aggravation of a pre-existing condition can still be compensable.

The overwhelming weight of the evidence unquestionably shows that the claimant's bilateral carpal tunnel syndrome in 2001, significantly improved, if not totally resolved, with appropriate conservative treatment modalities. One of these modalities was the avoidance of any strenuous hand intensive activities. Following the episode of bilateral carpal tunnel syndrome in 2001, the claimant appears to have neither needed or sought any continuing medical treatment and continued to be regularly gainfully employed by the respondent. Had the claimant's symptomology remained at that level, there is no doubt that she would have continued without seeking medical services and regularly gainfully employed.

The claimant may well have continued to experience some degree of bilateral carpal tunnel syndrome since 2001. However, as previously held in this opinion, it was the claimant's strenuous hand intensive employment activities, during the first part of 2006, that caused the reappearance and worsening of carpal tunnel syndrome symptoms. In turn, it was the reappearance or worsening of these symptoms, by July 6, 2006, that was the sole cause for the claimant's need for medical treatment and of any subsequent disability she may have sustained. Thus, I find that the employment related contribution to the claimant's total resultant condition, involving her wrists/hands during the first half of 2006, was the "major cause" of her need for medical services and any resulting disability, which she has experienced. Thus, she has satisfied the final statutory requirement for a "compensable injury", as contained in Ark. Code Ann. §11-9-102(4)(E)(ii).

## II. MEDICAL SERVICES

The final issue concerns the claimant's entitlement to the medical services provided her for her bilateral carpal tunnel syndrome by and at the direction of Dr. James Kelly. The burden rests upon the claimant to prove that these medical services represent "reasonably necessary medical services", as that term is used in Ark. Code Ann. §11-9-508.

In order to meet this burden the claimant must prove that these medical services were necessitated by or connected with her compensable injury. She must also prove that these medical services had a reasonable expectation of accomplishing the purpose or goal for which they were intended.

In the present case, the evidence presented shows that all of the medical services provided to the claimant for her wrists/hands difficulties by and at the direction of Dr. James Kelly was necessitated by or connected with the claimant's compensable injury, in the form of bilateral carpal tunnel syndrome. The evidence further shows that the medical services provided were of a type and nature generally recognized by the medical community as being an appropriate treatment modality for bilateral carpal tunnel syndrome. Further, the claimant's testimony and the reports of Dr. Kelly show that the medical services he provided to the claimant were actually successful in their intended purpose or goal of correcting the impingement of the claimant's median nerves in the area of the carpal tunnels and reducing or alleviating the symptoms this impingement was producing.

Therefore, I find that the greater weight of the credible evidence establishes that the medical services provided to the claimant for her bilateral carpal tunnel syndrome by and at the direction of Dr. James Kelly constitutes reasonably necessary medical services for this compensable injury, under Ark. Code Ann. §11-9-508. Pursuant to the provisions of this subsection, the respondents are liable for the expense of these services, subject to the medical fee schedule established by this Commission.\_

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On all relevant dates, including July 6, 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 \$239.00 for total disability and \$179.00 for permanent partial disability.
4. During the first half of 2006, the claimant sustained a compensable injury to her wrists/hands in the form of bilateral carpal tunnel syndrome. Specifically, the actual existence of this condition is established by medical evidence, which is supported by objective findings. Further, the greater weight of the credible evidence establishes that the claimant sustained physical injuries to her wrists/hands, in the form of a reoccurrence or aggravation of bilateral carpal tunnel syndrome, that arose out of and occurred in the course of her employment with the respondent during the first half of 2006, that caused internal physical harm to this part of her body, and that required medical services and resulted in disability. Finally, the greater weight of the evidence shows that the strenuous hand intensive employment activities for this respondent during the first half of 2006, was the "major cause" of the claimant's subsequent need for medical treatment and subsequent periods of disability.
5. The medical services provided to the claimant for her bilateral carpal tunnel syndrome by and at the direction of Dr. James Kelly represents reasonably necessary medical services, within the meaning of Ark. Code Ann. §11-9-508. Pursuant to the provisions of this subsection, the respondents are liable for the expense of these services, subject to the medical fee schedule established by this Commission.
6. The respondents have denied the occurrence of any compensable injury to the claimant's wrists/hands and have controverted her entitlement to any benefits.

7. As no controverted benefits are herein awarded to the claimant, no controverted attorney's fee can be awarded to her attorney at this time.

ORDER

The respondents are liable for the reasonably necessary medical services provided to the claimant by and at the direction of Dr. James Kelly for her compensable bilateral carpal tunnel syndrome. This liability is subject to the medical fee schedule established by this Commission. Pursuant to Ark. Code Ann. §11-9-411, the respondents are also entitled to a credit or set off for any medical expenses, which may have been paid under a group policy of insurance.

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
ADMINISTRATIVE LAW JUDGE