

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F106766

JANICE BUCKLEY,
EMPLOYEE

CLAIMANT

PACTIV CORPORATION,
EMPLOYER

RESPONDENT

PACIFIC EMPLOYERS INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 18, 2003

Upon review before the FULL COMMISSION in Little Rock,
Pulaski County, Arkansas.

Claimant represented by HONORABLE SHEILA F. CAMPBELL,
Attorney at Law, Little Rock, Arkansas.

Respondents represented by HONORABLE GUY ALTON WADE,
Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an Administrative Law Judge's
opinion filed October 24, 2002. The Administrative Law
Judge found that the claimant sustained a compensable
gradual-onset injury. After reviewing the entire record *de*
novo, the Full Commission reverses the opinion of the
Administrative Law Judge.

I. HISTORY

Janice Buckley, age 44, testified that she had suffered
from no previous problems with either upper extremity. The
record indicates, however, that Ms. Buckley received medical
treatment in January 1997 after complaining of left arm pain
with rotation of her wrist. Dr. Carol Guillaume examined

the claimant in January 1997 and assessed "Left arm pain." Beginning in June 1997, the claimant began a lengthy course of treatment for back pain after allegedly sustaining a work-related injury with another employer.

The record contains a respondent-employer's Job Description, dated December 14, 1998, for the Job Title of "Material Handler." The listed Job Duties included "Pack foam trays at company standard rate," "Handle minor adjustments on padders and other packaging equipment," and "Operate padding equipment at standard speeds."

It appears that the claimant began working as a temporary employee for Pactiv Corporation in December 2000. The claimant testified that she was a "packer," a "sleever," and a "rambler." The claimant agreed that the aforementioned Job Description accurately described her work duties. The record includes an Efficiency/Utilization Report dated February 21, 2001, Shift 1, Crew C. The Report shows a Grand Total of 1,020 for "Cases." A Grand Total of 4,916 was shown for "Lbs." The claimant testified that she worked on an assembly line. She testified:

A. This is a pallet right here (Indicating) and we set the trays on the pallet and then they come out through there, and then you catch them and then I would put them in a bag. And then they came out through here and it drops off over here (Indicating) and then we have to stack them....

Q. And so now did you have to physically bag four thousand nine hundred and sixteen (4,916) of those trays in a twelve-hour period?

A. Well, it was just me on the machine that night. I was on the machine that night, and the operator was just in the back of the machine, and then they had somebody actually catching them, you know, coming out. So it was just me on the machine, so I had work (sic) one side of the table, then I had to go around to the other side of the table and take the trays off on that side.

Q. So you were doing the job of two people?

A. Uh-huh.

The respondents' Production Manager, Bernard Alexander, testified:

Q. What is a YR06 Production Report?

A. A YR06 Production Report shows the supervisor themselves how each machine ran during the course of a shift....

Q. There was mention of a figure over here in the left hand corner of four thousand nine hundred and sixteen (4,916)?

A. Uh-huh.

Q. What does that figure represent?

A. That's the number of pounds produced based on the cases ran that day.

Q. Okay. So that's the number of pounds, that's not number of trays?

A. Right....

Q. Now, when it says a thousand twenty (1,020) trays, would somebody -

A. It's a thousand and twenty (1,020) cases.

Q. Twenty cases, okay. Would somebody actually have to touch or move each one of those thousand twenty (1,020)?

A. No.

Q. Why not?

A. Because the equipment that you run actually handles each individual tray. An individual may handle a stack of seventy-five (75) to a hundred (100) trays at a time....

Q. So they wouldn't be doing, say, moving trays like this (Demonstrating) every day all day?

A. In the pattern, the process example she gave....

Q. So the machine she was working on, she wouldn't be doing that same job -

A. No.

Q. - for a long or extended period of time, is that correct?

A. Right.

Q. Every twenty minutes her station or job or tasks would change?

A. Somebody else is going to be doing it, right....

Q. On page two of Claimant's exhibit, this indicates that the whole crew's production, correct?

A. For Shift C.

Q. Okay. And Shift C, how many machines would be running, do you know?

A. Well, on a shift you've got nine thermaformers that would be running....

Q. So if there are nine machines running, Ms. Buckley wouldn't be working nine machines?

A. No.

Q. She'd be on one of the nine?

A. Right.

Q. So you could divide that number by nine potentially and determine that's what Crew C actually produced?

A. If that's what that is, yes, sir.

Q. All right. But you can't tell that, can you?

A. No, I can't.

There is no report of an injury or record of medical treatment at the time of the claimant's February 21, 2001 job duties. The claimant agreed on cross-examination that she became a regular employee on April 17, 2001. The claimant testified that she did not work after May 14, 2001. The record includes an Interview Statement showing a dialogue between the claimant and Jim Shantz, dated May 15, 2001:

JS When did your wrist start hurting?

JB Well it has been hurting off and on for a while, but nothing that was real serious. Then last night it hurt me quite a bit. I called my sister and she said I should put heat on it.

JS Did you work yesterday?

JB Yes.

JS Do you remember hurting it while you were at work?

JB No, I don't remember hurting it, I just remember working.

JS Have you hurt your wrists (sic) at work anytime during your employment, was there anything at work that you can see that could have caused your wrist to hurt?

JB I don't remember anything. I don't remember bumping it or hurting it.

JS Do you think this could have happened because of work?

JB I cant (sic) say that it happened at work. All I do is work, go home and go to bed.

The claimant presented to Mercy Medical Clinic on May 15, 2001, where the History indicated, "c/o pain R wrist - real sore onset 3 days no injury, repetative (sic) work on job." The claimant was diagnosed with "de Quervain's," was treated conservatively, and was taken off work.

The claimant presented to Malvern Medical Center on May 16, 2001. The History indicated, "Needs statement for work (Tenneco) stating condition - Is it job related?" It was written, "I (sic) my opinion Pt condition R thumb abductor tendinitis could be related to repetitive hand joint movements."

The claimant requested a Leave Of Absence from May 15, 2001 to May 22, 2001. The stated reason was "Personal medical." On May 22, 2001, Dr. Rimantas Kazakevicius indicated that the claimant could return to work on June 5, 2001. The claimant requested another Leave Of Absence from May 14, 2001 to June 5, 2001, for the reason, "medical extension." (And another Leave was requested until June 13, 2001.) The claimant testified that Jim Shantz terminated her employment on or about May 22, 2001.

The claimant was seen at Mercy Medical Clinic on June 5, 2001, where she was apparently diagnosed with "R thumb abductor tendinitis" and "R carpal tunnel syndrome."

The claimant agreed that she filed a claim for worker's compensation on June 18, 2001.

Dr. Timothy P. Sloand wrote on July 2, 2001:

I had the pleasure of seeing Janice Buckley in the clinic today with her right wrist pain. She has signs and symptoms typical for de Quervain's tenosynovitis. She has negative Phalen's and Tinel's signs and I don't think that she has classic carpal tunnel syndrome. I am recommending a first dorsal compartment release. She has only gotten temporary relief from steroid injections but she has symptoms such that she should significantly improve with surgery. We will schedule that in the near future.

Dr. Sloand reported on July 9, 2001:

This is a 42 year old female who has had right radial-sided wrist pain for the last several months. She has had typical symptoms for de Quervain's tenosynovitis with pain at the base of the thumb. There were was (sic) some question of whether she had carpal tunnel syndrome....

The patient has typical de Quervain's tenosynovitis and is now admitted for surgical decompression....

Dr. Sloand reported on August 2, 2001:

Patient returns following her de Quervain's release but she continues to have mild carpal tunnel symptoms. She states that these have worsened over the last couple of weeks. It is not clear why this has worsened. She has been off of work and has really not been using her hand and extremity much....

An EMG and nerve conduction procedure was carried out on August 17, 2001, with the following impression:

The EMG of the right arm is normal. The nerve conduction studies suggest that the patient has had resolution of the carpal tunnel syndrome on the right. She does appear to still have some delay in the ulnar nerve at the wrist with entrapment syndrome down in Guyon's canal.

Dr. Sloand reported on August 23, 2001:

Janice Buckley returns with results of her EMG and nerve conduction test. They show no carpal tunnel and there may be some suggestion of ulnar entrapment of the wrist but she has had no symptoms of that at all. In light of this, I believe that most of her symptoms are related to an overuse syndrome with some forearm tendonitis which will most likely resolve with time. I believe that this was probably due to her job but I would not expect any further surgical treatment or work up and would just recommend continued conservative treatment. I will release her to her regular duty.

Dr. Bruce L. Smith, an associate of Dr. Sloand, reported on October 22, 2001:

Janice Buckley returns for follow-up for severe pain in the right arm and hand. She has been evaluated previously for carpal tunnel syndrome by Dr. Sloand, but her nerve studies, etc., were negative. She states that she is much worse and on exam she does have a positive Tinel's and Phalen's today clinically. I have discussed with her that even though the nerve test is not markedly abnormal, I think we should go ahead with the carpal tunnel release....

The record indicates that Dr. Smith diagnosed "Rt carpal tunnel syndrome" on or about October 30, 2001. Dr. Smith reported, "EMG and nerve conduction studies of the right hand are borderline....Patient is admitted for a right carpal tunnel release for Wednesday as an outpatient procedure."

Dr. Smith responded to a Legal/Medical Questionnaire mailed by the claimant's attorney to Dr. Sloand on November 10, 2001. Dr. Smith wrote "Yes" to the following questions:

1. Do you have an opinion whether Ms. Buckley's job as a material handler was more than fifty percent the cause of her developing carpal tunnel syndrome and de Quervain synovitis?
2. Do you have an opinion whether Ms. Buckley's job as a material handler was the major cause of her developing carpal tunnel syndrome and de Quervain synovitis?
3. Do you consider a production output of 4, 916 trays in a 12 hour period to be a rapid and repetitive job?

To the question, "What objective findings did you based (sic) your diagnosis of carpal tunnel syndrome and de Quervain synovitis?", Dr. Smith wrote, "Pain, numbness, + Tinels + Finkelstein."

Dr. Smith reported on January 4, 2002:

Janice Buckley returns in follow-up with the carpal tunnel release of the right wrist, and is doing very well today. She has markedly relief of pain and the numbness in the hand. She is released at this time to resume regular activities without restrictions.

Ms. Buckley claimed entitlement to worker's compensation. The claimant contended that she sustained a compensable injury in the form of bilateral carpal tunnel syndrome. The claimant contended that she was entitled to reasonably necessary medical treatment, and temporary total disability compensation from May 15, 2001 until a date yet to be determined. The claimant contended that she was

entitled to benefits pursuant to Ark. Code Ann. § 11-9-505(a). The respondents contended that the claimant did not timely report her claim, and that the claimant could not prove she sustained a compensable injury.

Hearing before the Commission was held on September 26, 2002. The claimant's testimony conflicted with Dr. Smith's January 4, 2002 report:

Q. And since the surgery, has your condition improved?

A. No. It still hurts, you know, it just don't come to this way now, it just hurts right up in here (Indicating). It still hurts....

Q. Up around your elbow?

A. Yeah.

The Administrative Law Judge found, "The claimant has established by a preponderance of the evidence that she sustained a gradual onset injury as a result of her job duties from December of 2000 to May 15, 2001, while employed by the respondent." The Administrative Law Judge found that the claimant's "work activities are the 'major cause' of her disability and need for treatment." The Administrative Law Judge awarded temporary total disability compensation from June 18, 2001 through January 4, 2002. Finally, the Administrative Law Judge found that the claimant was not entitled to benefits pursuant to Ark. Code Ann. § 11-9-505(a)(1); the claimant does not appeal this finding. The respondents appeal to the Full Commission.

II. ADJUDICATION

Act 796 of 1993, as codified at Ark. Code Ann. § 11-9-102(4) (A), defines "compensable injury":

- (ii) An injury causing internal or external physical harm to the body and arising out of and 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[.]

The test for determining whether an injury is caused by rapid repetitive motion is two-pronged: (1) the tasks must be repetitive; and (2) the repetitive motion must be rapid. Malone v. Texarkana Public Schools, 333 Ark. 343, 969 S.W.2d 644 (1998). Multiple tasks involving different movements can be considered together to satisfy the "repetitive element" of rapid repetitive motion. Malone, citing Baysinger v. Air Systems, Inc., 55 Ark. App. 174, 934 S.W.2d 230 (1996). However, proof of rapid repetitive motion is not required when a claimant contends that she sustained a compensable carpal tunnel syndrome injury. Kildow v. Baldwin Piano, 333 Ark. 335, 969 S.W.2d 190 (1998).

A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4) (D); Ark. Code Ann. § 11-9-102(16). Finally, the resultant condition is compensable only if the alleged compensable injury is the major cause of the

disability or need for treatment. Ark. Code Ann. § 11-9-102(4)(E)(ii); Medlin v. Wal-Mart Stores, Inc., 64 Ark. App. 17, 977 S.W.2d 239 (1998).

The Administrative Law Judge determined in the present matter, "The claimant has established by a preponderance of the evidence that her work activities are the 'major cause' of her disability and need for treatment." The Administrative Law Judge erred as a matter of law. Ark. Code Ann. § 11-9-102(4)(E)(ii) expressly requires a claimant to prove that the "compensable injury," not "work activity," is the major cause of her disability or need for treatment. Medlin, *supra*.

In any event, the Full Commission reverses the Administrative Law Judge's finding that the claimant sustained a compensable injury. Initially, the preponderance of evidence does not show that she has ever suffered from right carpal tunnel syndrome. (The Administrative Law Judge's opinion is not clear on this point, but the claimant plainly did not sustain any sort of injury to the left upper extremity.) The claimant began working for the respondents in December 2000, and she was diagnosed with "de Quervain's" in May 2001. Dorland's Illustrated Medical Dictionary, 28th Edition, defines "de Quervain's disease" as "painful tenosynovitis due to relative narrowness of the common tendon sheath of the

abductor pollicis longus and the extensor pollicis brevis.” De Quervain’s disease is not synonymous with carpal tunnel syndrome. In order to find compensability for the claimant’s alleged de Quervain’s condition, the Commission would need to find that her work duties were rapid and repetitive pursuant the statutory provisions of Act 796. The preponderance of evidence does not show that the claimant’s work duties were rapid and repetitive. The claimant introduced a February 2001 document purporting to show the volume of cases that were processed, but she did not clearly testify to any sort of rapid repetitive hand manipulations related to this document. Additionally, the claimant neither sought medical treatment nor reported an injury in February 2001.

Although her brief to the Full Commission is not clear, however, the claimant appears to assert that she sustained a compensable carpal tunnel syndrome condition. The claimant therefore does not have to prove rapid repetitive motion. Kildow, *supra*. The claimant does have to prove, though, that her condition arose out of her employment. Ark. Code Ann. § 11-9-102(4)(A)(ii). Again, there was no record of medical treatment or any upper extremity complaints at the time of the claimant’s February 2001 work duties. When the claimant interviewed with a supervisor in May 2001, she was not at all sure she had a work-related condition. The

claimant stated at that time that she could not remember any upper extremity complaints related to her work. The claimant asked for a medical opinion on May 16, 2001 regarding work-relatedness. A physician stated that the claimant's right thumb condition *could be* related to repetitive movements at work. Even if this opinion was stated within a reasonable degree of medical certainty, which we do not find, there was no diagnosis of carpal tunnel syndrome. The claimant subsequently requested a Leave of Absence for "personal medical." The claimant did not assert that her Leave was related to a workplace injury.

The Commission recognizes that someone assessed "right carpal tunnel syndrome" on June 5, 2001. But Dr. Sloand, an orthopedic surgeon, stated on July 2, 2001, "I don't think that she has classic carpal tunnel syndrome." An electrodiagnostic study in August 2001 indicated "resolution of the carpal tunnel syndrome on the right." However, carpal tunnel syndrome had not been established by any objective diagnostic testing. The same electro-diagnosis showed "some delay in the ulnar nerve at the wrist with entrapment syndrome down in Guyon's canal." Dr. Sloand subsequently reported that this objective diagnostic testing showed "no carpal tunnel and there may be some suggestion of ulnar entrapment of the wrist *but she has had no symptoms of that at all* (our emphasis). The claimant failed to

establish with objective medical findings a compensable carpal tunnel syndrome condition.

The Full Commission finds that the claimant failed to prove that she sustained right carpal tunnel syndrome arising out of her employment and established by objective medical findings. Nor did the claimant prove that the alleged compensable injury was the major cause of her disability or need for treatment. Dr. Smith told the claimant's attorney in November 2001 that the "objective findings" that supported his diagnosis of carpal tunnel syndrome were pain, numbness, Tinel's testing, and Finkelstein's testing. These are all plainly subjective and cannot be relied on for compensability. Duke v. Regis Hairstylists, 55 Ark. App. 327, 935 S.W.2d 600 (1996). Dr. Smith had earlier noted that objective nerve studies were negative. Finally, we note that after two surgeries and being off from work for several months, the claimant still complained of pain in her right arm at the elbow. Any determination that the claimant's condition was causally related to her employment with the respondents would be based on speculation and conjecture, which can never supply the place of proof. Dena Construction Co. v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979).

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant failed to prove by a

preponderance of evidence that she sustained a compensable injury. We therefore reverse the opinion of the Administrative Law Judge. This claim is respectfully denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

JOE E. YATES, Commissioner

Commissioner Turner dissents.