

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F204636

CAROL FRIAS, EMPLOYEE	CLAIMANT
LOWE'S HOME CENTER, SELF-INSURED EMPLOYER	RESPONDENT
SPECIALTY RISK, THIRD PARTY ADMINISTRATOR	RESPONDENT

OPINION FILED AUGUST 1, 2003

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

Claimant represented by HONORABLE JAY TOLLEY, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by HONORABLE RANDY P. MURPHY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed December 23, 2002.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On all relevant dates, the relationship of employee-self insured employer existed between the parties.

3. On all relevant dates, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$227.00 for total disability and \$170.00 for permanent partial disability, should such benefits have been appropriate.

4. The claimant has failed to prove that her bilateral carpal tunnel syndrome represents a compensable injury within the meaning of the Act. Specifically, she has failed to prove that her bilateral carpal tunnel syndrome constitutes an injury or condition arising out of and in the course of her employment with this respondent.

5. In the event the claimant had proven that her bilateral carpal tunnel syndrome constituted a "compensable injury", she would be barred from receiving any benefits attributable to such an injury under the provisions of Ark. Code Ann. §11-9-701, until May 15, 2002.

6. The respondents have denied that the claimant's bilateral carpal tunnel syndrome represents a "compensable injury" and have controverted this claim in its entirety.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

JOE E. YATES, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion, which in all respects affirms and adopts the decision of the Administrative Law Judge that the claimant failed to prove a compensable gradual onset injury in the form of carpal tunnel syndrome.

The central issue in this case is whether the claimant's diagnosed carpal tunnel syndrome is causally related to her work activities. After reviewing the evidence in the record, I must respectfully disagree with the conclusion of the Administrative Law Judge that the claimant failed to prove this causal connection.

In concluding that the claimant failed to prove a causal connection, the Administrative Law Judge stated that

"[f]rom the evidence presented, it is difficult to determine whether there exists any reasonably close temporal relationship between the onset of the claimant's bilateral carpal tunnel difficulties and her employment related activities...." In support of this conclusion, the Administrative Law Judge stated that "[t]his is due in great part to the claimant's inconsistent and conflicting testimony regarding the onset and progression of her symptoms...." The Administrative Law Judge also stated that the motor vehicle accident on May 7, 2001 was a "reasonable and likely" cause of the claimant's carpal tunnel syndrome, or alternatively that the Carpal tunnel syndrome could have been caused by the claimant's diabetes or her hobbies of bowling and sewing."

While there is no medical opinion testimony on the issue of causation of the claimant's carpal tunnel syndrome, case law is clear that the causation element of compensability need not be established by objective medical evidence or expert medical opinion. Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999); Stephens Truck Lines v. Millican, 58 Ark. App. 275, 950 S.W.2d 472 (1997). My review of the evidence as a whole leads me to conclude that, more likely than not, the claimant's carpal tunnel syndrome is causally related to her work activities. While admittedly other *possible* causes of claimant's carpal

tunnel syndrome exist, it is not the claimant's burden to prove her work duties as the cause of her carpal tunnel syndrome, to the absolute exclusion of any other possible cause. Therefore, while it is indeed possible that the May 2001 car accident, or claimant's hobbies of bowling and sewing is the cause of her carpal tunnel syndrome, it is more likely, in my opinion, that her three-year job as a cashier for the respondent employer is the cause.

As indicated above, the Administrative Law Judge stated that the claimant gave "inconsistent and conflicting" testimony regarding the onset of her carpal tunnel syndrome symptoms. My review of the claimant's testimony indicates that in fact, she was quite candid in acknowledging that she had no significant carpal tunnel syndrome problems prior to the performance on the nerve conduction study on December 10, 2001; that she was surprised to learn that she even had carpal tunnel syndrome when Dr. Benafield first diagnosed her in February of 2002; and that carpal tunnel symptoms have never caused her to be unable to perform her work duties. I therefore do not find any material inconsistencies in claimant's testimony regarding the onset of her carpal tunnel syndrome.

In any event, I cannot conclude, as did the Administrative Law Judge, that the claimant's testimony and statements as to her onset of symptoms in any way tends to

indicate that the claimant's carpal tunnel syndrome is not causally related to her work activities. The fact that claimant's carpal tunnel syndrome did not manifest until after she had been working for the respondent employer for three years cannot, in my opinion, be reasonably interpreted as an indication that the carpal tunnel syndrome is not work-related. A gradual onset injury is, by definition, one that gradually develops over time. I therefore respectfully disagree with the conclusion of the Administrative Law Judge that the delay in onset of claimant's symptoms from the time of her commencement of employment tends to indicate a lack of causal connection to her work duties.

In short, I find that, though there may be alternative causes of the claimant's carpal tunnel syndrome, the most likely cause is her work as a cashier for the respondent employer. The Administrative Law Judge mentioned several other *possible* causes of the claimant's carpal tunnel syndrome, but my review of the evidence indicates that it requires speculation and conjecture to conclude that any of these possibilities are in fact the cause. As to the possibility that her carpal tunnel syndrome was caused by the May 7, 2001 motor vehicle accident, there is a lack of indication in the record that the claimant's carpal tunnel problems began immediately after the accident. As to the possibility that her carpal tunnel syndrome was caused by

diabetes, there is a complete lack of any medical evidence establishing such a causal connection. The most likely explanation for the claimant's carpal tunnel syndrome is that it has developed over time while performing work of a rapid and repetitive nature for the respondent employer.

SHELBY W. TURNER, Commissioner