

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F207821

DONALD ROSCOE,
EMPLOYEE

CLAIMANT

MICRO PLASTICS,
EMPLOYER

RESPONDENT

TRAVELERS INSURANCE CO.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED SEPTEMBER 12, 2003

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

Claimant represented by the HONORABLE FREDERICK "RICK"
SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondents represented by the HONORABLE ROBERT MONTGOMERY,
Attorney at Law, Little Rock, Arkansas.

Decision of administrative law judge: Reversed.

OPINION AND ORDER

The claimant appeals an Administrative Law Judge's
opinion filed February 18, 2003. The Administrative Law
Judge found that the claimant failed to prove he sustained a
compensable injury. After reviewing the entire record *de*
novo, the Full Commission reverses the opinion of the
Administrative Law Judge. We find that the claimant proved
by a preponderance of the evidence that he sustained a
compensable injury, and that the claimant proved he was

entitled to reasonably necessary medical treatment provided in connection with the compensable injury.

I. HISTORY

Edward Chesney testified that he was maintenance manager for Micro Plastics, Inc., and his testimony indicated that he had hired Donald Roscoe, age 57, in about 1997. Mr. Chesney testified, "We do everything that has to do with maintenance, yard work, weed eating, mowing, we have support equipment for the injection molding machines, dryers, tumblers, the convey, material conveying systems, grinders, dehumidifiers, ovens, fans, and many more" Mr. Chesney agreed that this work "requires using the hands." On cross-examination, Mr. Chesney could not recall the claimant complaining of previous problems with his hands.

The claimant presented to Dr. J. Gregory Elders on February 4, 2000:

His major complaints are a left hand numbness off and on over the past many yrs, related back to working in an automotive factory. This has recently worsened, especially when he drives. It's all 4 fingers, doesn't lateralize....He drinks 2-3 beers a night....Extremities w/o edema.

IMPRESSION/PLANS: ...

2. Possible left CTS. This is long-standing.
1st suggest he get off the beer.
If he desires, we can do a nerve conduction study.
It is not physiologic and Tinel and Phalen tests
are neg. It may simply be a peripheral neuropathy
or other etiology....

The claimant testified that Dr. Elders wrongly described previous work in an automotive factory, that the claimant had actually worked in the "forging industry." The claimant agreed on cross-examination that his work in the forging industry involved "repetitive use of the hands, doing the same thing over and over again." However, the claimant testified that this previous job only affected his left hand, and "as soon as I quit that job it went away and I didn't have a problem anymore."

Mr. Chesney agreed on direct examination that the claimant began complaining of left hand problems in the Summer of 2001, and that the claimant said his problems eventually also appeared on the right side. Mr. Chesney agreed on re-direct that the claimant attributed his problems to his employment with the respondents. The claimant testified that he began the first two hours of each day at work checking filters on water towers, which included "screwing and unscrewing filter tops lids....I think it was

two hundred and forty turns in that first two hours....I feel that when I'm down there and you have to hold the filter with one hand, balance yourself kind of and turn, I feel it in my wrist every time, you know." The claimant also used heavy tools at work with his hands. Tim Hampton, a co-worker, corroborated the claimant's testimony. Mr. Hampton testified that the claimant had "a bunch" of acres to mow, and that the claimant complained of hand problems which the claimant related to his work with the respondents.

The claimant was seen at Baxter Regional Medical Center Physical Therapy Department on January 11, 2002:

The patient is a 56 year old white male with a multiple year history of complaints of pain and paraesthesias (sic) in his hands. He describes his hands as "falling asleep". He states that they bother him constantly, and they wake him at night. He is unable to differentiate sparing of the fourth or fifth digits from his complaints. Over the last three months, he has had the complaints of left cervical region pain. Over the past seven to eight months, he has had complaints of proximal radiation of pain up his arm as far as the mid humeral region with supination of the right forearm. His past medical history is not apparently contributory. He (sic) work history is presently involved in maintenance. He had a previous occupational history of piece work with repetitive use of his hands. Patient is referred for nerve conduction testing today....

IMPRESSION: Today's study is consistent with carpal tunnel syndrome, bilaterally, along with

the left ulnar nerve across the elbow.

The claimant also presented to Dr. Elders on January 11, 2002, for "Transient upper extremity numbness, right arm greater than left." Dr. Elders' impression following a carotid doppler was "Mild to moderate carotid disease, not hemodynamically significant at this point."

A physician reported on February 1, 2002:

56 YO WM w/pain in the left side of his neck. Also c/CTS diagnosed (sic) by nerve conduction study last time w/ a little bit of ulnar neuritis in the left arm. He has no previous treatment for this. His hands "fall asleep" at night, he has pain radiating back up the arm as well....I think he's had a muscular strain in the cervical muscles.

The impression included neck pain and "Bilateral CTS." The claimant was treated conservatively.

Mr. Chesney agreed that the claimant had consistently complained of wrist problems since the Summer of 2002. The claimant had not been off work.

Dr. Lonnie S. Robinson noted on August 30, 2002:

56YO WM with CTS bilaterally, right greater than left as far as symptoms. Having numbness, paresthesias with just about any movement. It awakens him most nights with discomfort. He's on Naprosyn EC bid w/meals, wrist splints at night. Nerve conduction study confirmed Dx. Symptoms started about 2-3 years ago and just aren't getting any better. He's having problems getting

coverage from Worker's Comp. After reviewing a list he brings in today, which is scanned into Chartkeeper, I think it would be very difficult to say that his injuries are not work related. He does a lot of manual manipulation and repetitive motion at work which has been shown to be a causative factor in this and I really do think this is a work related issue. We discussed this briefly. He's trying to get this straightened out with Worker's Comp. I think his next treatment would be surgical and we'll make a surgical referral when he gets everything worked out with Worker's Comp. For now, he's getting maximal conservative treatment and not improving, we'll have him continue those measures for now.

The final medical report is a note from Dr. Robinson dated September 5, 2002:

Mr. Roscoe is a patient that I have been seeing for carpal tunnel syndrome for several months now. It is my opinion that this is related to repetitive motions he performs at work. This is supported by my medical records which are available should you need them per release by the patient.

Mr. Roscoe claimed entitlement to worker's compensation. The claimant contended that he suffered from carpal tunnel syndrome, and that this condition was compensable pursuant to Act 796. The respondents controverted the claim. The respondents contended that the claimant's condition was pre-existing and not compensable.

Hearing before the Commission was held on November 20, 2002. The claimant testified:

Q. Tell the Judge what symptoms you're having with both of your hands and wrists?

A. Well, I lose a lot of sleep cause they wake me up, driving, if I even go down and use the mouse on a computer, and it's getting bad, worse and worse you know, and -

Q. Over time?

A. Yes, and what I had mentioned to my boss was about weed eating, was that after a half hour or so of weed eating, I couldn't feel the throttle button to control the speed of the weed eater and that's what I told him.

Q. Are you talking about the first witness that testified today?

A. Yes....

Q. And, now you, did you see Dr. McBride to get a surgery scheduled?

A. I called my doctor to get a referral and they turned me down saying that they wouldn't do anything because of the between the insurance companies.

The Administrative Law Judge found that the claimant failed to prove he sustained an injury arising out of and in the course of his employment. The ALJ therefore denied and dismissed the claim; claimant appeals 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[.]

Proof of rapid repetitive motion is not required when a claimant contends that he sustained a compensable carpal tunnel syndrome injury. Kildow v. Baldwin Piano, 333 Ark. 335, 969 S.W.2d 190 (1998). 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). Finally, a compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4) (D).

Initially, we note that the Administrative Law Judge filed an opinion on February 18, 2003. The ALJ then filed an Amended Order And Opinion on March 21, 2003. The ALJ noted language from the first opinion, to wit, "At the time

of the hearing, the parties were able to stipulate to an average weekly wage of \$570." The ALJ concludes in the amended opinion that "this is incorrect due to clerical error." We note that counsel expressly stipulated to the average weekly wage at hearing. The ALJ's conclusion to the contrary in his March 21, 2003 opinion is in fact incorrect. What the ALJ really appears to be doing is correcting an editing and proofreading error on p. 2 of his February 18, 2003 opinion, which error has nothing to do with the stipulated average weekly wage. This apparent mix-up by the ALJ is of no moment in our substantive adjudication of this case.

In any event, the Full Commission reverses the Administrative Law Judge's opinion that the claimant failed to prove he sustained a compensable injury. This 57-year-old claimant began working for the respondent-employer in about 1997. The claimant's supervisor testified that the claimant's yard work and maintenance for the respondents was hand-intensive. The claimant went to Dr. Elders in February 2000 and reported prior *left* hand difficulties which had previously existed several years before the claimant began working for the respondents. The claimant credibly

testified that his left hand problems resolved after he left his previous employment. The claimant testified that he had been away from this previous job for nearly 25 years. The ALJ relied in part on Dr. Elders' report to deny the claim, but we find that Dr. Elders' opinion is entitled to minimal weight. Dr. Elders concluded, with no other support in the record, that the claimant's problem was "not physiologic." Nor does the record support Dr. Elders' conclusion that the claimant needed to "get off the beer" in order to alleviate his left hand numbness. The claimant also testified that he had a personality conflict with Dr. Elders.

The claimant freely admitted that he had experienced left hand problems following an employment at a "forging factory," but the claimant credibly testified that he did not experienced further problems after leaving that employment. The record indicates that the claimant began experiencing significant upper extremity problems in 2001, which the claimant and his supervisor attributed to the claimant's work. In January 2002, "bilateral carpal tunnel syndrome" was shown after objective diagnostic testing. Even considering the claimant's former work, the record contains no previous diagnosis of carpal tunnel syndrome.

Dr. Robinson stated in August 2002 that the claimant's symptoms "started about 2-3 years ago." This period corresponds with the claimant's instant employment. Dr. Robinson wrote, "I think it would be very difficult to say that his injuries are not work related." Dr. Robinson opined in September 2002, "this is related to repetitive motions he performs at work." The claimant does not have to prove that his carpal tunnel syndrome was caused by rapid repetitive motion; nevertheless, the findings of Dr. Robinson indicate that the claimant's condition arose out of his employment with the respondents.

Based on our *de novo* review of the entire record, the Full Commission reverses the opinion of the Administrative Law Judge. We find that the claimant proved he sustained bilateral carpal tunnel syndrome, which injury arose out of and in the course of the claimant's employment with the respondents. The claimant established his compensable injury with objective medical findings. The claimant also proved by a preponderance of the evidence that the compensable injury was the major cause of the claimant's need for treatment. Pursuant to Ark. Code Ann. §11-9-508(a), we find that the claimant proved he was entitled to

reasonably necessary medical treatment provided in connection with the compensable injury. Said reasonably necessary medical treatment includes all of the treatment and recommendations of Dr. Robinson.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the administrative law judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$250.00 in accordance with Ark. Code Ann. § 11-9-715. Because the injury occurred prior to July 1, 2001, this is under prior law (see Repl. 1996).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner Yates dissents.

DISSENTING OPINION

I respectfully dissent from the majority opinion's reversal of the Administrative Law Judge's opinion. I find that the Administrative Law Judge's conclusion that the claimant failed to prove by a preponderance of the evidence that he sustained a compensable gradual onset injury arising out of and in the course of his employment with the respondent is correct and should be affirmed. There is medical evidence in the record which states that the claimant experienced upper extremity complaints for several years prior to his employment with the respondent. The claimant had worked in a forging factory performing repetitive piece work prior to his employment with the respondent, and the claimant has for several years routinely participated in bowling.

Since the claimant asserts that he sustained a work-related gradual onset of carpal tunnel syndrome, he is not required to establish that his work duties required rapid repetitive motion in order to establish the compensability of her/his carpal tunnel syndrome

injury. Kildow v. Baldwin Piano & Organ, 333 Ark. 335, 969 S.W.2d 1990(1998). However, the claimant must still prove that he sustained a carpal tunnel syndrome injury arising out of and in the course of his employment, that a work-related injury is the major cause of his disability or need for medical treatment, and the compensable injury must be established by objective medical findings. Id.

Because I do not find that the claimant has met his burden of proof by a preponderance of the evidence that his work for the respondents was the major cause of his present carpal tunnel syndrome, I find that the Administrative Law Judge's opinion should be affirmed. Therefore, I must respectfully dissent from the majority opinion.

JOE E. YATES, Commissioner