

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F100269

MICHAEL J. TALLEY, EMPLOYEE	CLAIMANT
RAYTHEON WASHINGTON GROUP, EMPLOYER	RESPONDENT
TRAVELERS INSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED AUGUST 8, 2003

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

Claimant represented by HONORABLE WILLIAM F. SMITH, Attorney at Law, Russellville, Arkansas.

Respondent represented by HONORABLE ROBERT H. MONTGOMERY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed in part and affirmed as modified in part.

OPINION AND ORDER

The respondents appeal from an Administrative Law Judge's opinion filed September 27, 2002. It was stipulated that the claimant sustained compensable injuries to his low back on December 7, 2000, and January 10, 2001. The issues presented at hearing were whether the claimant sustained a compensable carpal tunnel injury on December 7, 2000, and January 10, 2001, and whether the claimant was entitled to temporary total disability from January 11, 2001, through a date yet to be determined. The Administrative Law Judge found that the claimant sustained a compensable right carpal tunnel syndrome and was entitled to temporary total disability for his low back injury from the date he last worked to a date yet to be determined. After reviewing the

entire record *de novo*, the Full Commission finds that the claimant failed to prove by a preponderance of the evidence that he sustained a compensable carpal tunnel injury, and failed to prove that he remained in his healing period after September 14, 2001. Therefore, we reverse in part and modify in part the opinion of the Administrative Law Judge.

The 47-year-old claimant had been trained as a carpenter in the Navy. He began working for the respondent in November 2000. Prior to beginning that employment, the claimant had been on a job in Texas in which he worked two months straight with no days off. He testified that his work for the respondent was rapid, repetitive and hand intensive.

The claimant testified that on December 7, 2000, he was removing concrete forms when he felt a sharp pain go through his back. His legs went numb and he sustained a fall. An emergency room narrative from that date states "lower back pain [with] numbness to fingers" as the claimant's complaints, and a Triage Nurse's Admitting Form shows him reciting some numbness to both hands.

The claimant was placed on light duty following the December incident, but had returned to performing his regular job by January 10, 2001. He testified that on that date, he felt the same pain go through his back and legs, and he sustained another fall. The claimant was treated by

Dr. Ramirro, and later by Dr. Hendren. There are off-work notes from Dr. Hendren for January 18 through February 1, 2001. The claimant was terminated for absenteeism on January 24, 2001.

A physical therapy referral from Dr. Hendren dated January 18, 2001, provides only back pain as a diagnosis. Physical therapy notes from January 23 and February 2, 9 and 17, 2001, only address a back injury. Dr. Hendren's note from January 25, 2001, states that the claimant said that he "also had some transient paresthesias in his right arm." Dr. Hendren's February 2, 2001, note states that a sensory examination revealed diminished sensation fitting a stocking glove type distribution. A note from Dr. Hendren dictated February 12, 2001, states that the claimant came in for a follow-up and continued to complain of back pain and left leg pain. It states that the claimant "also describes a sense of numbness in his right hand and thinks he can't use his hand as well. On neurological exam . . . he has a hyperesthesia involving the stocking glove distribution of his entire right hand. His reflexes are symmetrical. His motor exam reveals symmetrical strength."

The claimant was next referred to Dr. Allison, an orthopaedic surgeon. A clinic note from Dr. Allison dated February 21, 2001, states that the claimant presented with a complaint of back pain. The history taken from the claimant

does not mention the upper extremities at all. A review of symptoms included shortness of breath, back pain, burning sensation in the legs, and lung disease from asbestos. The results of a physical examination make no reference to the claimant's upper extremities and Dr. Allison's assessment is low back pain.

An MRI performed on March 2, 2001, shows a bulging disc at L2-3, and degenerative changes at L3-4 and L5-S1. A clinic note from Dr. Allison dated March 7, 2001, shows the claimant returning with a complaint of low back pain. The physical examination section of this report states, "Showed no neurological symptoms with good muscle strength and normal reflexes. He has good sensation, good pulses, hips and knees have good motion." He was assessed by Dr. Allison as having low back pain from degenerative disc disease. Dr. Allison's note from March 28, 2001, states that the claimant returned again with a complaint of back pain. The physical examination on that date revealed, "Some numbness in the right hand, but this is in the forefingers and not into the thumb."

Dr. Allison referred the claimant for a nerve conduction study that was performed on March 20, 2001. Dr. Julia McCoy interpreted the results of this exam as showing, "Right carpal tunnel syndrome. Left ulnar neuropathy at the elbow, chronic." Dr. Allison next referred the claimant to

Dr. Valley, who wrote on April 6, 2001, that he assessed the claimant as follows:

1. Work related injury, December 7, 2000, and again on January 10, 2001.
2. Low back pain.
3. Multi level degenerative disc disease.
4. Sciatica.

A physical examination report from Dr. Valley dated April 17, 2001, shows the claimant complaining of "tingling to light touch entire RUE and entire LLE." While the range of motion in his wrists was within normal limits, the report indicates that the claimant was unable to touch his fingertip to his palm, or oppose his thumb to fingers on his right hand, and that the grip strength was 50% less than normal. Dr. Valley performed lumbar epidural steroid injections on May 4 and 18, 2001. A record from Dr. Valley dated May 24, 2001, does not reflect the claimant complaining of any upper extremity symptoms and a physical exam also notes no upper extremity symptoms. Dr. Valley's note from September 14, 2001, states that the epidural steroid injections resulted in no improvement to the claimant's degenerative disc disease. Dr. Valley wrote in this note that the claimant had reached maximum medical improvement, but he also recommended a functional capacity evaluation.

A note from Dr. Valley's clinic dated September 24, 2001, essentially releases the claimant from care. It indicates that Dr. Valley recommended that the claimant continue to take prescription medications and follow up with his family physician. The claimant returned to see Dr. Valley for the last time on November 12, 2001. Dr. Valley wrote in a letter to Dr. Hendren, that he discussed options with the claimant at that visit, including a TENS Unit, a provocative discogram, and anti-inflammatory and pain medications. Dr. Valley wrote: "There is no charge for this visit as I did not examine him, and I only discussed treatment options as a result of his previous procedure."

In a letter dated January 4, 2002, Dr. Valley wrote:

I feel that the patient has permanent partial disability and that these bulging discs . . . causing the pain will not disappear on there (sic) own. They have not responded well to conservative therapy and any type of active (sic) is going to exacerbate the patient's condition. I would recommend limiting his activity to lifting 30 pounds temporarily and no constant lifting over 20 pounds, no prolonged sitting, standing, walking, climbing, squatting, no sweeping or mopping type movements. In order for me to more definitively assess his limitations he would need a functional capacity evaluation.

The claimant's medical treatment associated with his back injury was paid through January 2002, after which time he went to the Veterans' Medical Center. The claimant

continues to receive treatment for depression and pain management from the Veterans' Hospital. The Department of Veterans' Affairs has assigned him a 40% whole body impairment rating for his back, a 20% impairment rating for his right hand, and a 10% impairment for his left elbow. The claimant testified that he has not been released to return to work, and continues to suffer from back pain and numbness in his hand and elbow.

Based upon our *de novo* review of the evidence, we find that the claimant failed to prove that he sustained a compensable carpal tunnel injury, and failed to prove that he remained in his healing period after September 14, 2001. Therefore, we reverse in part and modify in part the opinion of the Administrative Law Judge.

Carpal Tunnel Syndrome Injury. While the claimant is not required to establish that his work duties required rapid repetitive motion in order to establish the compensability of his carpal tunnel syndrome injury, he 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. Kildow v. Baldwin Piano & Organ, 333 Ark. 335, 969 S.W.2d 1990 (1998).

We find that the claimant failed to meet his burden of proof that he sustained a compensable carpal tunnel syndrome injury, because he failed to establish such a injury by objective medical findings. The medical record does contain numerous references to *subjective* complaints relative to the claimant's right upper extremity; however, the claimant failed to consistently report these subjective symptoms. The emergency room narrative from December 7, 2000, states that he complained of numbness to his fingers; but the Triage Nurse's Admitting Form from that date shows him reciting numbness to both hands. The medical records dated after the claimant's second fall do not reflect that he continued to experience complaints with regard to his right hand or wrist, even after he had returned to regular duty work. A physical therapy referral from Dr. Hendren dated January 18, 2001, provides only back pain as a diagnosis, and physical therapy notes from January 23 and February 2, 9 and 17, 2001, only address a back injury.

The next mention of a hand problem is not found until Dr. Hendren's note from January 25, 2001, which states that the claimant reported "some transient paresthesias in his right arm." Paresthesias is defined in Dorland's Illustrated Medical Dictionary as an abnormal burning or prickling sensation. Dr. Hendren's February 2, 2001, note states that a sensory examination revealed *diminished*

sensation fitting a stocking glove type distribution. His note for February 12, 2001, states that the claimant described a sense of numbness in his right hand, yet the exam revealed hyperesthesia involving his entire hand. Hyperesthesia is defined in Dorland's as increased sensitivity to stimulation. The claimant was next treated by Dr. Allison, whose clinic note dated March 7, 2001, stated that a physical examination showed no neurological symptoms, good muscle strength and good sensation. Dr. Allison's notes do not mention the upper extremities at all except for a notation on March 28, 2001, when an exam revealed numbness in the claimant's forefingers only.

The only objective finding of a carpal tunnel injury was the EMG/nerve conduction study performed on March 20, 2001, which Dr. McCoy interpreted as showing right carpal tunnel syndrome. No other doctor has confirmed this diagnosis, nor even referred to it in their notes.

Dr. Valley assessed the claimant on April 6, 2001, as having only low back pain, multi-level degenerative disc disease, and sciatica. While his physical examination report dated April 17, 2001, shows the claimant complaining of his *entire* right upper extremity tingling to light touch, and states that the claimant was unable to touch his fingertip to his palm, or oppose his thumb to fingers on his right hand, Dr. Valley never administered any treatment in

response to these subjective complaints. His records from May 4, 18 and 24, 2001, do not reflect any upper extremity symptoms. When the claimant returned to see Dr. Valley on November 12, 2001, they only discussed treatment options for his low back complaints, and in Dr. Valley's letter dated January 4, 2002, he found that the claimant was permanently partially disabled as a result of his bulging discs, not as a result of any upper extremity complaint. For the foregoing reasons, we find that the claimant failed to meet his burden of proof that he sustained a compensable carpal tunnel syndrome injury supported by objective medical findings.

Temporary Total Disability. An injured employee is entitled to temporary total disability compensation during the period of time that he is within her healing period and totally incapacitated to earn wages. Arkansas State Highway & Transp. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d (1981). The "healing period" is defined as the period necessary for the healing of an injury resulting from an accident. Ark. Code Ann. § 11-9-102(12) (Repl. 2002). When the underlying condition causing the disability becomes stable and when nothing further will improve that condition, the healing period has ended, and the claimant is no longer entitled to receive temporary total disability compensation, regardless of his physical capabilities. Moreover, the

persistence of pain is not sufficient in itself to extend the healing period or to find that the claimant is totally incapacitated from earning wages. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982). Conversely, the healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. Arkansas State Highway & Transp. Dept. v. McWilliams, 41 Ark. App. 1, 846 S.W.2d 670 (1993).

We find that the claimant is entitled to temporary total disability from January 18, 2001, the date he was initially taken off work by Dr. Hendren, through September 14, 2001, the date Dr. Valley opined that the claimant had reached maximum medical improvement. No further treatment options have been recommended by any of the claimant's treating physicians for the improvement of his low back condition. Therefore, his healing period has ended and he is no longer entitled to receive temporary total disability compensation. The note from Dr. Valley's clinic dated September 24, 2001, released the claimant from his care, and indicated only that the claimant should continue to take prescription medications and follow up with his family physician. There are no records indicating this follow-up ever occurred. The claimant returned to see Dr. Valley on November 12, 2001. But during this visit Dr. Valley only discussed additional treatment options with the claimant,

and did not expressly recommend any of those options, or state that he would provide them. The final letter from Dr. Valley dated January 4, 2002, opines that the claimant is permanently partially disabled as a result of his bulging discs. Further, the Veterans Administration has assigned the claimant impairment ratings for his back condition. Based upon the foregoing evidence, we find that the claimant's healing period ended on September 14, 2001. Therefore we modify the Administrative Law Judge's open-ended award of temporary total disability benefits.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

JOE E. YATES, Commissioner

Commissioner Turner concurs in part and dissents in part.

CONCURRING AND DISSENTING OPINION

_____I respectfully concur in part and dissent in part from the majority opinion, which reverses in part and affirms as modified in part the decision of the Administrative Law Judge. Specifically, I concur with the decision of the majority opinion to affirm the Administrative Law Judge's determination that claimant is entitled to temporary total disability benefits for the

period of January 11, 2001 to September 14, 2001. However, I must respectfully dissent from the majority's modification of the Administrative Law Judge's award of temporary total disability benefits from January 11, 2001 to a date yet to be determined. Like the Administrative Law Judge, I find that the claimant's entitlement to temporary total disability benefits continued beyond September 14, 2001 to a date yet to be determined as of the hearing date. I also respectfully dissent from the decision of the majority to reverse the Administrative Law Judge's determination that claimant proved a compensable carpal tunnel injury.

In order to prove a compensable carpal tunnel syndrome (CTS) injury, the claimant must prove (1) the existence of CTS in his right upper extremity with evidence of objective medical findings, and (2) that the CTS so established is causally related to either the work accidents of December 7, 2000 or January 11, 2001; or alternatively to his work activity in general. Furthermore, *only if* it is found that the claimant's CTS is not the result of a specific incident, the claimant must prove that his CTS injury is the major cause of his disability or need for treatment. A.C.A. §11-9-102(4)(E)(ii); *Medlin v. Wal-Mart Stores, Inc.*, 64 Ark.App. 17, 977 S.W.2d 239 (1998).

As to compensability of the claimant's CTS, the majority concludes that the claimant failed to prove

compensability of his carpal tunnel syndrome because of a lack of objective findings. The majority states that there are only subjective complaints in the record which support claimant's upper extremity carpal tunnel syndrome. However, as the Administrative Law Judge correctly indicated, the claimant was clearly diagnosed with carpal tunnel syndrome in his right upper extremity by Dr. Julia McCoy, as a result of a nerve conduction study performed on March 20, 2001. *CX1*, pp. 112-14.

The majority acknowledges that this study was performed, and that Dr. McCoy did indeed diagnose the claimant with right carpal tunnel syndrome as a result of this study. Apparently in order to discredit the diagnosis of Dr. McCoy, the majority states that "no other doctor has confirmed this diagnosis, nor even referred to it in their notes." However, I fail to understand why the mere fact that no other doctor "confirmed" Dr. McCoy's diagnosis tends to discredit it. It is equally true that no other doctor called Dr. McCoy's diagnosis into question. Thus, the claimant has clearly met his burden of proving the existence of carpal tunnel syndrome in his right upper extremity with objective medical findings. 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).

Therefore, since the claimant has clearly met his burden of proving the existence of carpal tunnel syndrome by objective medical findings, the only issue with regard to his alleged CTS injury is whether his CTS is causally related to his work. In support of his finding that the claimant's CTS did indeed bear a causal relation to his work, the Administrative Law Judge noted that (1) there is no indication in the record that the claimant had any problems with his right hand prior to December 7, 2000, and (2) the claimant complained of numbness in his fingers at the time of the fall. I find that these observations of the Administrative Law Judge are correct, and thus that claimant has established that more likely than not, his CTS is causally related to his work with respondent employer.

In further support of their apparent conclusion that any CTS the claimant may have bears no causal relation to his employment, the majority notes that the claimant's medical records subsequent to December 7, 2000 do not constantly mention carpal tunnel-related complaints. However, I fail to see how this fact in any way tends to indicate either that the claimant does not actually have CTS, or that his CTS is not causally related to his work with respondent employer. If the majority is citing this fact as proof that the claimant does not suffer from CTS, I note that Dr. McCoy clearly diagnosed the claimant with CTS

as a result of nerve conduction study. If the majority is citing this fact as proof that the claimant's CTS is not causally related to his work with the respondent employer, I would point to the facts that claimant did indeed complain of numbness in his hands at the time of the fall, and also that claimant had other problems resulting from the December 7, 2000 injury that apparently took precedent over any carpal tunnel problems. Therefore, I fail to see how the absence of constant carpal tunnel complaints in the medical records in any way tends to disprove claimant's claim of a compensable carpal tunnel injury.

In summary, my review of the evidence indicates that the claimant's carpal tunnel syndrome is causally related to the December 7, 2000 work injury, or alternatively is related to his work for the respondent employer in general. The claimant reported numbness in his hands immediately after the injury. While the medical records indicate that his lower back was the primary problem, the records clearly indicate that the claimant did consistently complain of continuing right upper extremity symptoms consistent with carpal tunnel syndrome. The claimant's continuing reports of right upper extremity problems clearly led Drs. Allison and Hendren to refer the claimant for a nerve conduction study of his upper extremity. As a result of that study, Dr. McCoy opined that

the claimant suffered from right carpal tunnel syndrome. There is no indication in the record that the claimant had previously suffered from CTS-type problems prior to the December 7, 2000 work injury, and prior to his employment with respondent employer. Therefore, I find that more likely than not, the claimant's right CTS is causally related to either the December 7, 2000 work injury, or his employment with respondent employer in general. Moreover, even if it is found that the claimant's CTS is the result of his employment in general rather than a specific incident, I find that his work duties were the major cause of his CTS.

I respectfully dissent.

SHELBY W. TURNER, Commissioner