

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F105107 & F105108

MILLICENT CROSS,
EMPLOYEE

CLAIMANT

ARKANSAS FEDERAL CREDIT UNION,
EMPLOYER

RESPONDENT

CUMIS INSURANCE SOCIETY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED NOVEMBER 10, 2004

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

Claimant represented by HONORABLE SILAS H. BREWER, Attorney
at Law, Little Rock, Arkansas.

Respondents represented by HONORABLE MARK T. McCARTY,
Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Affirmed and
adopted.

OPINION AND ORDER

The claimant appeals from a decision of the
Administrative Law Judge filed July 21, 2004 and amended
September 8, 2004. The Administrative Law Judge entered the
following findings of fact and conclusions of law:

1. Claimant has failed to meet her burden of
proving by a preponderance of the evidence
that her carpal tunnel syndrome complaints
are compensable. Specifically, the claimant
has failed to establish a causal connection
between her employment and her injury, within
a reasonable degree of medical certainty.

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

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____ I must respectfully dissent from the opinion of the majority finding that claimant failed to prove that her bilateral carpal tunnel syndrome is causally related to her employment.

Claimant was a mail clerk for the employer. It is not disputed that claimant's job duties involved frequent lifting and gripping on a repetitive basis. Her job duties were particularly hand intensive during the preparation of quarterly statements for customers. There is no evidence that claimant was involved in any nonwork-related activities of a hand-intensive or repetitive nature.

Based on claimant's credible testimony concerning her job duties and the lack of any other reasonable nonwork-related explanation for her bilateral carpal tunnel syndrome, plus the evidence that her symptoms of pain, burning, and tingling arose contemporaneously with her repetitive and hand-intensive job duties, I find that claimant has met her burden of proving by a preponderance of the evidence that her bilateral carpal tunnel syndrome is causally related to her employment.

Admittedly, Dr. Michael Moore's opinions are not stated within a reasonable degree of medical certainty. Dr. Moore said, "I cannot definitively state that Ms. Cross's work activities would be the primary cause of her carpal tunnel syndrome. However, if she does perform work that requires significant or repetitive gripping and lifting, this type of work activity could aggravate symptoms

associated with carpal tunnel syndrome." Dr. Moore's terminology is exactly the same as he has used in just about every other case to come before this Commission. Even though Dr. Moore's opinion is not stated within a reasonable degree of medical certainty, it certainly lends credence to the above-noted evidence that claimant's carpal tunnel syndrome is causally related to, or aggravated by, her work activities.

Dr. Markiewitz's opinions are not helpful in this case. He is very quick to classify carpal tunnel syndrome as "a disease of life and not affected by work." However, the General Assembly has categorized carpal tunnel syndrome as a compensable injury caused by rapid repetitive motion. Ark. Code Ann. § 11-9-102(4) (A) (ii) (a) (Supp. 2003). Further, he makes the following incredible statement: "Her discomfort at the wrist with certain activities is inconsistent with carpal tunnel syndrome." This statement defies common sense. Therefore, I accord little, if any, weight to the opinions expressed by Dr. Markiewitz.

Finally, the Commission's specific finding is that "the claimant has failed to establish a causal connection between her employment and her injury, within a reasonable degree of medical certainty." (Emphasis added.) This is not

a correct statement of the law. The Arkansas Court of Appeals and the Arkansas Supreme Court have discussed this matter on numerous occasions. For example, in Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 990 S.W.2d 522 (1999), the Supreme Court found that medical evidence or opinions are not necessary in every case to establish a causal connection. Only medical opinions addressing causation (compensability) and permanent impairment must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16)(B) (Supp. 2003). A causal connection can be established solely by non-medical evidence.

Even disregarding both medical opinions in this case, I find that claimant has met her burden of proving by a preponderance of the evidence that her bilateral carpal tunnel syndrome is causally related to her employment. Accordingly, the opinion of the Administrative Law Judge should be reversed.

SHELBY W. TURNER, Commissioner