

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F212200

BETTY J. EASLEY,
EMPLOYEE

CLAIMANT

EMERSON ELECTRIC CO.,
SELF-INSURED EMPLOYER

RESPONDENT

OPINION FILED FEBRUARY 17, 2004

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

Claimant represented by HONORABLE KENNETH A. OLSEN, Attorney
at Law, Little Rock, Arkansas.

Respondents represented by HONORABLE DONIS B. HAMILTON,
Attorney at Law, Paragould, Arkansas.

Decision of the Administrative Law Judge: Affirmed and
adopted.

OPINION AND ORDER

The respondents appeal from a decision of the
Administrative Law Judge filed August 18, 2003. The
Administrative Law Judge entered the following findings of
fact and conclusions of law:

1. There was a compensable injury on September
25, 2001.
2. The temporary total disability rate is \$298.
3. The claimant has proven by a preponderance of
the evidence that she sustained a compensable
gradual onset injury to her wrist.
4. The claimant has proven by a preponderance of
the evidence that she remained in her healing

period and was not working after February 20, 2003, to the present.

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. 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).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (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 \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I respectfully dissent from the majority opinion finding that the claimant proved by a preponderance of the evidence that she sustained a compensable gradual onset injury to her wrist. In my opinion, the claimant has failed to meet her burden of proof. Specifically, I find that the claimant has failed to prove by a preponderance of the evidence that the injury was the major cause of her disability or need for treatment.

The medical evidence demonstrates that the claimant had a congenital condition plus a degenerative condition. Specifically, Dr. Marcia Hixson, the claimant's treating physician, stated:

- A. She gave me a history of about a year and half's history of pain in the right wrist.
- Q. Did she report to you any injury or acute onset or trauma?
- A. No. She said it was a gradual onset and didn't recall a specific injury for the wrist.

In her deposition, Dr. Hixson also described what was reflected by her examination and x-rays provided:

- Q. Okay. Did you have an opportunity to review any tests or x-rays or reports, or did you conduct any x-rays or tests on her?
- A. Dr. Shedd sent some x-rays from his office of the wrist that showed that the wrist had an ulnar that was slightly longer than the radius.
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- Q. Is that, to your observation, a trauma induced condition?
- A. No. She was born that way.
- Q. Okay. And after having reviewed these x-rays or tests or whatever it was you looked and determined this condition, did you undertake to reach a conclusion or a diagnosis about the situation with which you were presented?
- A. Yes. I thought that based on her complaints and the examination and review of the x-rays, that she most

likely had a degenerative tear in her triangular fibro cartilage, which is the ligament that goes through between the two bones, and it can be eroded through time, especially if the ulnar is slightly longer.

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Q. Okay. And then the surgery that you recommended was what?

A. Well, it's to debride the torn ligament, and, actually, you have to break the ulnar and shorten it so that decompresses, takes the pressure off the ligament and doesn't butt up against the wrist bone.

Q. Okay, and in that instance you would be correcting what basically is a congenital problem?

A. Congenital plus degenerative.

Q. Yeah, over quite some period of time, apparently?

A. Apparently.

For gradual onset injuries, the claimant must be able to prove that the major cause of her disability or need for treatment was the injury. In my opinion, the claimant has failed to do so. Dr. Hixson's deposition testimony further states:

Q. The question is: Can this be achieved, this tear or

degeneration, in a shorter period of time if you use your hand more through overuse?

A. It's possible.

Q. Do you feel like you need the surgery just because she had the conditional-congenital long ulnar or was it because of the TSCC?

A. It was because of the ligament tear.

Q. And is it possible or even likely that the TFCC resulted from overuse combined with the congenital condition?

A. That's possible.

Q. Is it likely?

A. About fifty percent likely.

Q. Not fifty-one?

A. I can't say that one-one would contribute more than the other. The use of the hand will make it more symptomatic, that's for sure.

Q. Okay.

A. But as to cause, I can't say.

Simply put, in my opinion, the claimant has failed to prove that her injury was the major cause of her disability or need for treatment. Therefore, her claim must fail.

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Accordingly, I must dissent from the majority's opinion awarding benefits.

KAREN H. MCKINNEY, Commissioner