

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F304712

JEREMY WALTERS,
EMPLOYEE

CLAIMANT

US TIMBER CO.,
EMPLOYER

RESPONDENT

TRAVELERS INS. CO.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED SEPTEMBER 16, 2004

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

Claimant represented by HONORABLE R. GUNNER DELAY, Attorney
at Law, Fort Smith, Arkansas.

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

Decision of the Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondent appeals an administrative law judge's opinion, which was filed on November 3, 2003. The administrative law judge found among other things, that "The claimant has proven by a preponderance of the evidence that he sustained bilateral carpal tunnel syndrome while working for the respondent. The respondent should pay for the medical treatment for this claimant's bilateral carpal tunnel syndrome treatment." In addition, the administrative law judge found that "the claimant has proven by a preponderance of the evidence that he is entitled to

temporary total disability from July 9, 2002, until June 13, 2003."

After reviewing the entire record *de novo*, the Full Commission reverses the opinion of the administrative law judge. We find that the claimant failed to establish a compensable injury in the form of bilateral carpal tunnel syndrome with medical evidence supported by "objective findings."

I. History

The claimant, age 31, began working for the respondent/ employer in June of 2001. The claimant's initial job duties required him to "pull lumber off the chain" in what he believed to be a repetitive motion and stack it in a bundle on a cart. The claimant testified that he performed this task continuously throughout his shift. The claimant was subsequently required to run the "tilt hoist" machine wherein he was required to "flip boards," which were 2-by-12s and various other sizes. The claimant was also required to perform this task during the entire course of his shift.

The claimant had not experienced any prior problems with his hands or wrists before going to work for the respondent. Although the claimant developed slight hand and wrist problems after he began performing his initial job

duties, his pain and related symptoms worsened approximately one month after he started running the "tilt hoist" machine. Therefore, the claimant sought treatment from Dr. Michael Miranda for the problems with his hands and wrists.

Specifically, on June 27, 2002, the claimant complained to Dr. Miranda of wrist and hand pain that he maintained had been going on during the last month. The claimant described pain that started from his wrist that radiated into his elbows, and pain that affected the thumb, 2nd and 3rd fingers. The claimant had no reports of numbness, but he did have reports of tingling. Also, on June 27, 2002, Dr. Miranda reported, "I don't see any obvious swelling or deformity of the hand or wrist, positive teneal [sic] sign bilaterally and positive phalanx [sic] test, bilaterally." At that time, Dr. Miranda assessed the claimant as having "bilateral carpal tunnel syndrome."

Although the claimant's attorney did not offer into evidence the subsequent medical records of his treatment for carpal tunnel, the claimant testified that he was referred by Dr. Miranda to Dr. Smith, at River Valley Orthopaedic in Fort Smith. According to the claimant, Dr. Smith performed carpal tunnel surgery on both wrists. The claimant believes that surgery was performed on the right wrist first, which

was done in August of 2002, and that the second surgery was performed on his left wrist in September of 2002.

After these two surgeries, the claimant was referred to Dr. James E. Kelly, III, due to continued symptoms of pain and numbness of the arms and hands, which were accompanied by "tingling" sensations. Subsequently, the claimant underwent surgery to both elbows with Dr. Kelly.

According to the medical records of evidence, the claimant underwent "left pronator tunnel release" with Dr. Kelly on February 27, 2003. Thereafter, the claimant was discharged to the recovery room in good condition.

On March 14, 2003, the claimant presented to Dr. Kelly for follow-up care for his bilateral pronator tunnel syndrome. Dr. Kelly reported that the claimant's left release had been successful. In addition to this, Dr. Kelly stated, "He is free to do anything he would like with the left arm at this point and [sic] time, and I would like him to return in about six weeks, at which point I will recheck his arm. If it is fully recovered, then at that point and [sic] time we can then schedule him to do the opposite side."

The next medical record shows that the claimant was next seen by Dr. Kelly on April 28, 2003. At that time, the

claimant presented for follow up after having had a left pronator tunnel release and carpal tunnel release completed on the left arm. Although the claimant's numbness was better, he still had "achy pain." Dr. Kelly reported that the claimant had high "tinels'" up into the arm as well as the infraclavicular area. Therefore, Dr. Kelly ordered an MRI of his neck so that he could determine if the claimant had any neck disc problems.

The claimant was seen for a follow-up visit on May 12, 2003. At that time, Dr. Kelly reported:

Mr. Walters presents to the office today in follow up for his upper extremity exam. His MRI was negative. He had normal C-spine exam. He has strongly positive tinels now down into the forearm and just to the base of the hand, so I am sure that his left pronator tunnel release is recovering and I expect that he will start to see recovery sensation over the next 2-3[sic] months. At this point, I plan to schedule him for his right pronator tunnel release....

On May 16, 2003, the claimant underwent right pronator tunnel release with Dr. Kelly for "right pronator tunnel syndrome." Dr. Kelly described the surgery in part, as follows:

....The brachioradialis reflected from harm's way and the fibrosis of the biceps tendon was released and then the median nerve was then dissected from proximal to distal down through to the pronator entrance into the tunnel. The pronator had a

sharp fibrous band pressing against the nerve which had an hourglass deformity....

Dr. Kelly reported on June 13, 2003:

Mr. Walters presents to the office today in follow up after he had a right pronator tunnel release completed back on May 16th. His sensation is better. He states he doesn't tingle as much. He still is having some tingling and discomfort that goes down into the hand and arm, but I think that this is in keeping with the level and degree of the compression that he had in the forearm. His left arm is slowly getting better as well. At this point I think it is just a matter of time to allow the nerve to resolve. I explained all of this to him. He is free to use his hand at will and I will see him back in about three months for a final recheck.

The claimant testified that he has continued to have problems with his elbows after the surgery because they "go numb" and "tingle and hurt." The claimant further testified that he has not worked since July 9, 2002. According to the claimant, he was discharged by the respondent due to his carpal tunnel syndrome.

A pre-hearing order was entered in this case on June 26, 2003. This pre-hearing order set forth the stipulations offered by the parties, and outlined the issues to be litigated and resolved at the hearing, which was held on September 11, 2003. By agreement of the parties, the issues to be litigated and resolved at the hearing were limited to the following:

1. Compensability of the claimant's bilateral carpal tunnel problems.

2. Related medical.

3. Temporary total disability from July 9, 2002, to a date to be determined.

4. Attorney's fees.

The claimant contended that he is entitled to temporary total disability benefits from July 9, 2002, to the present. In contrast, the respondent contended that the claimant did not sustain a compensable injury within the course and scope of his employment with U.S. Timber.

After a hearing before the Commission, the administrative law judge found, among other things, that "The claimant has proven by a preponderance of the evidence that he sustained bilateral carpal tunnel syndrome while working for the respondent. The respondent should pay for the medical treatment for this claimant's bilateral carpal tunnel syndrome treatment." In addition, the administrative law judge found that "the claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability from July 9, 2002, until June 13, 2003." The respondent 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 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[.]

Therefore, 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). A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102 (4) (D). However, 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).

Moreover, if an employee fails to establish by a preponderance of the credible evidence any of these requirements for establishing the compensability of the alleged injury, he fails to establish the compensability of

the claim and the claim must be denied. Jerry D. Reed v. ConAgra Frozen Foods, FC Opinion filed Feb. 2, 1995 (E317744).

In the present claim, the administrative law judge found that the claimant has proven by a preponderance of the evidence that he sustained bilateral carpal tunnel syndrome while working for the respondent. However, we find that the claimant has failed to establish a compensable injury in the form of bilateral carpal tunnel syndrome with medical evidence supported by objective findings as required by Act 976 of 1993. "Objective findings" are defined in Ark. Code Ann. § 11-9-102 (16) as: "Those findings which cannot come under the voluntary control of the patient." Although, Dr. Miranda diagnosed the claimant with "bilateral carpal tunnel syndrome," there is no objective evidence to support this diagnosis. Dr. Miranda simply relied upon the claimant's subjective responses to the clinical tests, which included, positive Tinel's sign, bilaterally, and positive Phalen's test, bilaterally. However, we find that these tests do not constitute objective findings since they fall within the voluntary control of the claimant. As such, although the claimant has been diagnosed with bilateral carpal tunnel syndrome which has been causally related to his employment,

he has not presented sufficient medical evidence to satisfy the requirement of "objective findings" so as to establish a compensable injury.

We also note that although the administrative law judge found that the new Rule 37, which deals with occupational carpal tunnel syndrome indicates that a positive Phalen's test and Tinel's test are sufficient to diagnose occupational carpal tunnel syndrome, we find that the administrative law judge's interpretation of this rule is incorrect. Although Tinel's sign and Phalen's sign are listed under the section of "Signs **or** Objective findings," there is nothing in this rule which indicates that such signs are sufficient to establish a diagnosis of carpal tunnel, and nor is there anything in the rule that indicates that these signs meet the requirements of "objective findings" as set forth in Ark. Code Ann. § 11-9-102 (16). Instead, under this rule, Tinel's sign and Phalen's sign are specifically referenced as "signs" rather than objective findings. These "signs" would not constitute objective findings under Ark. Code Ann. § 11-9-102 (16). Duke v. Regis Hairstylists, 55 Ark. App. 327, 935 S. W. 2d 600 (1996). Moreover, we note that this rule specifically states

that "nerve conduction studies" are the recognized standard for the diagnosis of carpal tunnel syndrome.

The Full Commission further finds that since the claimant has failed to establish by a preponderance of the evidence that he sustained a compensable injury in the form of bilateral carpal tunnel syndrome, he would not be entitled to any temporary total disability benefits, and nor would he be entitled to any related medical benefits.

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 has failed to establish a compensable injury in the form of bilateral carpal tunnel syndrome with medical evidence supported by "objective findings." As a result, this claim is denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.