

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F400944

PATRICIA COLLETTE,
EMPLOYEE

CLAIMANT

COTTAGE CAFÉ, INC.,
EMPLOYER

RESPONDENT NO. 1

FARMERS INSURANCE GROUP,
INSURANCE CARRIER

RESPONDENT NO. 1

SOUTHERN GUARANTY INSURANCE CO.,
INSURANCE CARRIER

RESPONDENT NO. 2

OPINION FILED MAY 13, 2005

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

Claimant represented by the HONORABLE J. RANDOLPH SHOCK,
Attorney at Law, Fort Smith, Arkansas.

Respondents No. 1 represented by the HONORABLE CAROL LOCKARD
WORLEY, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE ANDREW IVEY,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed in part and
reversed in part.

OPINION AND ORDER

Respondent #2 appeals an administrative law judge's
opinion filed October 19, 2004. The administrative law
judge found, in pertinent part, "Claimant has met her burden

of proving by a preponderance of the evidence that she suffered a compensable gradual onset injury to her right wrist and elbow while employed by respondent while respondent #2 was the compensation carrier. Respondent #2 is liable for all compensation benefits including all reasonable and necessary medical treatment; and temporary total disability benefits from September 30, 2003 through November 10, 2003."

After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's finding that the claimant has proven by a preponderance of the evidence that she suffered a compensable gradual onset injury to her right wrist and elbow while employed by the respondent/ Cottage Café. We affirm the administrative law judge's finding that the claimant is entitled to payment for all reasonable and necessary medical treatment; and temporary total disability compensation beginning September 30, 2003 and continuing through November 10, 2003. However, the Full Commission reverses the administrative law judge's finding that respondent #2 is liable for the compensation and benefits awarded for the claimant's compensable gradual onset injury to her right wrist and right elbow. Instead,

we find that respondent #1 was the compensation carrier at the time wherein the claimant suffered her compensable injury. Therefore, the Full Commission finds that respondent #1 is liable for payment of all reasonable and necessary medical treatment, and temporary total disability compensation from September 30, 2003 through November 10, 2003. As a result, the Full Commission affirms in part and reverses in part the administrative law judge's opinion.

I. History

The claimant, age 45, began working for the Cottage Café in 1994. At the time of her hire, the Café' was owned by Christine Badeaux and the insurance carrier was Respondent #2. On September 12, 2003, Leonard Cernak purchased the Café from Ms. Badeaux, but he continued the claimant's employment. Thereafter Mr. Cernak obtained workers' compensation insurance coverage through respondent #1, which became effective September 23, 2003.

Specifically, the claimant worked performing job duties for the respondent as a grill cook. According to the claimant, she was required to cook breakfast-grits, hash browns, home fries, biscuits and bacon. The claimant is right-hand dominant. On September 29, 2003, while

performing her job duties as a grill cook, an incident occurred wherein the claimant dropped a spatula from her hand. According to the claimant, her hand began to hurt to the point that it brought tears to her eyes. Shortly thereafter, the claimant reported the incident to her supervisor/the owner, Mr. Cernak. Although the claimant completed her shift, she sought medical treatment for her hand that day.

A review of the medical evidence shows that the claimant in fact first sought medical treatment for her right hand pain and related symptoms from Dr. Bart Sills on September 29, 2003, the day of the incident. At that time, the claimant had complaints of hand pain, numbness and related symptoms. She also reported that her elbow had been hurting for approximately three months. Dr. Sills assessed the claimant as having right elbow epichondylitis and carpal tunnel, for which he prescribed medications and directed her to refrain from working for two weeks.

On October 13, 2003, the claimant was seen for follow-up care with Dr. Sills. At that time, the claimant reported that her right elbow pain was getting worse. Therefore, Dr.

Sills ordered an MRI of the claimant's right elbow and shoulder and an EMG/NCV.

The claimant underwent these diagnostic testings on October 15, 2003. Although the MRI of the claimant's right elbow and shoulder revealed normal results, the EMG/NCV study revealed the following:

IMPRESSION:

1. Carpal tunnel syndrome right moderate.
2. Tardy ulnar palsy right mild.

Subsequently, Dr. Sills referred the claimant for evaluation and treatment with Dr. James Kelly III. In a letter dated November 10, 2003, Dr. Kelly reported, in pertinent part, the following to Dr. Sills:

I have reviewed the EMG/NCV study which showed a right carpal tunnel and ulnar tardy neuropathy of the ulnar of the elbow. This is compatible with the physical findings of carpal tunnel and cubital tunnel syndrome. I think this is obviously related to her repetitive use on her job and my plan will be to schedule her to undergo right carpal tunnel and cubital tunnel release at the same time. She will be on one hand duty restrictions for approximately four weeks, at which point she would be released to a light duty situation and hopefully full duties at six to eight weeks post-operatively. The patient understands the plan. I will make arrangements to do this as mentioned and of course be following her post-operatively.

In addition, Dr. Kelly released the claimant to return to light-duty work on November 10, 2003. However, due to illness unrelated to her workers' compensation claim, the claimant did not return to work for the respondent until November 17, 2003.

Both respondent #1 and respondent #2 have denied compensability of the claimant's right wrist and elbow injury. Therefore, the claimant has brought this claim asserting her rights to compensation and benefits for her right wrist and elbow injury.

A hearing was held in this matter on September 27, 2004. At the hearing, the claimant essentially testified that prior to September 29, 2003, she had not filed a workers' compensation claim, a claim for Social Security benefits or a personal injury claim regarding her right wrist or right elbow. She also denied having ever sought medical treatment from a doctor, chiropractor or any other professional for any problem relating to her right wrist or right elbow.

According to the claimant, she was taken off work from September 30, 2003 until November 10, 2003 due to her right wrist and right elbow injury. However, the claimant

admitted to being unable to return to work at that time due to illness (bronchitis) unrelated to her alleged workers' compensation injury. Therefore, the claimant returned to work for the respondent on November 17, 2003, but her hours were reduced, as business was slow. As a result, the claimant quit working for the respondent on January 6, 2004, in part due to a reduction in her working hours and because of ongoing problems with her hand. Following this, the claimant drew unemployment compensation benefits in the amount of \$158.00 per week, for some 13 weeks. Subsequent to this, the claimant obtained employment with a retail store stocking artificial flowers. The claimant worked there for only a day and a half. According to the claimant, she was fired because she was unable to provide management with a doctor's excuse for being ill due to symptoms unrelated to her workers' compensation claim.

The claimant returned to work for the respondent on June 9, 2004. Since this time, the claimant has resumed her regular job duties as a grill cook. As of the date of the hearing, the claimant was working 30 to 35 hours per week at a rate of \$7.00 per hour. The claimant also testified that she currently experiences symptoms of numbness and sharp

pain in her right wrist and right elbow every couple of hours. As a result, she wishes to have the surgical procedure performed, which has been recommended by Dr. Kelly.

As to prior symptoms with her right arm, the claimant admitted that she had experienced problems with her right arm swelling a few months prior to the incident of September 29, 2003. However, the claimant testified that she did not seek medical treatment because she felt that this was nothing to worry about, as she attributed her symptoms to a pulled muscle or ligament. The claimant further testified that her job duties on the grill involved flipping eggs, omelets, hash browns, ham, sausage, and bacon. In addition to this, the claimant testified that she had previously performed job duties as a dinner cook, which involved making pinto beans, green beans, mashed potatoes, pies, chicken, fries, and roast beef. She also testified that she was required to "pinch rolls."

Mr. Cernak also gave testimony during the hearing. He testified that he purchased the Cottage Café from Ms. Badeaux on September 12, 2003. According to Mr. Cernak, approximately 10 days after he took over the restaurant, the

claimant mentioned to him she was having problems with her right arm. However, Mr. Cernak did not recall the claimant talking to him about the spatula incident, but he admitted that he had observed her at work and that she was having difficulty with her right arm and elbow.

Josie Carolyn Akins, one of the claimant's co-workers and the mother of Ms. Badeaux, also testified during the hearing. According to Ms. Akins, she has worked for the Café since 2000. Ms. Akins testified that prior to September of 2003, the claimant had been complaining about her right elbow for eight or nine months, or maybe a year. She also testified that she observed the claimant's right elbow to be "swollen and red." Although Ms. Akins could not recall specific dates, she testified that the claimant would drop different things at different times. In addition, Ms. Akins testified that the claimant was good help, and that there was no doubt in her mind that the claimant had suffered problems with her right arm as a result of her job duties in the kitchen.

Brandi Wagoner, a friend and co-worker of the claimant also gave testimony during the hearing. Ms. Wagoner testified that the claimant was a great worker. She also

testified that she witnessed the incident of the claimant dropping the spatula on the floor. In addition to this, Ms. Wagoner testified that in September 2003, she observed things in the claimant's behavior that convinced her that the claimant was having difficulty with her right arm.

Alexia Hodges, another of the claimant's co-workers, testified that she witnessed the incident of the claimant dropping the spatula, but she did not recall the date. According to Ms. Hodges, the claimant had a "dumbfounded" look on her face when she dropped the spatula. She also testified that the claimant was a very good worker. In addition, Ms. Hodges testified that the claimant continues to have problems with her hand, but they all try to help her by picking up things that she cannot pick up.

Barbara Brownfield, also a co-worker, testified that she witnessed the incident of the claimant dropping the spatula. However, Ms. Brownfield did not recall that the claimant was having any prior problems with her arm. She did admit to having to help the claimant carry things and that others helped her as well.

Prior to the hearing, a Prehearing Conference was held in this case, and as a result, a Prehearing Order was

entered in the claim on June 9, 2004. The following stipulations were offered and accepted:

- 1). The Arkansas Workers' Compensation has jurisdiction of the within claim.
- 2). The relationship of employee-employer existed between the parties at all relevant times.
- 3). Farmers Insurance Group (respondent #1) became the workers' compensation carrier on September 23, 2003.

The parties agreed to litigate the following issues:

- 1). The compensability of a gradual onset injury to the claimant's right wrist and elbow.
- 2). Medicals.
- 3). Temporary total disability or temporary partial disability benefits.
- 4). An attorney's fee.
- 5). Whether respondent #1 or respondent #2 is liable for benefits.
- 6). Compensation rate.
- 7). Credit for unemployment compensation.

The claimant contended that she suffered a gradual onset of bilateral carpal tunnel syndrome (at the hearing, the claimant's attorney amended this claim for a gradual onset injury to the right wrist and elbow only, and added the compensation rate as an issue) due to repetitive use and overuse of the hands which resulted in the need for medical

treatment on September 29, 2003. Claimant further contended that she is entitled to medical benefits, temporary total disability benefits, temporary partial disability, and a maximum attorney fee.

Respondent #1 contended that it did not become the employer's compensation carrier until September 23, 2003 after claimant had already suffered a compensable injury. Respondent #1 further contended that in the event the claim is compensable it is entitled to a credit for unemployment compensation benefits claimant received between January 6, 2004 and June 9, 2004. In addition, respondent #1 also requests credit for wages claimant earned for the period of time while she was working. Respondent #1 also contended that respondent #2's coverage was in effect until November 5, 2003. Respondent #2 has agreed that it was the employer's compensation carrier until September 23, 2003. However, respondent #2 contended that claimant's injury did not manifest itself until after respondent #1 was on the risk. Respondent #2 adopted the same position as respondent #1 with respect to claimant's request for temporary total disability benefits.

After a hearing before the Commission, the administrative law judge found, in pertinent part, "Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable gradual onset injury to her right wrist and elbow while employed by respondent while respondent #2 was the compensation carrier. Respondent #2 is liable for all compensation benefits including all reasonable and necessary medical treatment; and temporary total disability benefits from September 30, 2003 through November 10, 2003." Respondent #2 appeals to the Full Commission.

II. ADJUDICATION

Respondent #2 appeals a decision by the administrative law judge finding that the claimant proved by a preponderance of the evidence that she sustained a compensable gradual onset injury, and a finding that respondent #2 is liable for payment of all compensation benefits. The Full Commission affirms the administrative law judge's findings that the claimant proved by a preponderance of the evidence that she sustained a compensable gradual onset injury to her right wrist and elbow; that the claimant is entitled to compensation benefits including all

reasonable and necessary medical treatment; and temporary total disability benefits from September 30, 2003 through November 10, 2003. However, the Full Commission reverses the administrative law judge's finding that respondent #2 is liable for payment of said compensation benefits. Instead, the Full Commission finds that respondent #1 is liable for payment of these compensation benefits.

The first issue of consideration is whether the claimant sustained a compensable injury. In the present matter, the claimant maintains that she suffered a gradual onset injury to her right wrist [carpal tunnel syndrome] and right elbow [cubital tunnel] while working at the café. Since the claimant has been diagnosed with carpal tunnel syndrome in her right wrist, proof that her job duties involved rapid repetitive motion is not required for this condition. Kildow v. Baldwin Piano & Organ, 333 Ark. 335, 969 S.W.2d 190 (1998). However, with respect to the claimant's diagnosis for her right elbow in the form of cubital tunnel syndrome, she must still demonstrate that her work duties involved rapid repetitive motion as an element of her claim. In addition, for both of these conditions, the claimant must establish that they arose out of and in

the course of her employment, that they are the major cause of her disability or need for treatment; and she must establish them with objective medical findings.

The instant claimant worked for the Café several years performing job duties as a grill cook, wherein she was required to cook various foods on the grill, which required flipping food with a spatula. The claimant offered extensive testimony concerning the types of food she was required to prepare, which included, eggs, omelets, hash browns, ham, sausage, bacon, and home fries. In addition to this, the claimant was also required to hand "pinch" rolls and prepare various other dinner items. Several of the claimant's co-workers corroborated her testimony regarding these job duties and they indicated that she was a hard worker. It is specifically noted that Ms. Akins (who is a co-worker and the mother of the previous owner, Ms. Badeaux), testified that the claimant was "good help," and there was no doubt in her mind that the claimant had suffered problems with her right arm as a result of her job duties in the kitchen.

We also note that Dr. Kelly stated in a letter to Dr. Sills dated November 10, 2003 that he had reviewed the nerve

conduction study which revealed physical findings compatible with carpal tunnel and cubital tunnel syndrome. Moreover, we note that in this letter, Dr. Kelly opined that these conditions were obviously related to the claimant's repetitive use on her job. There are no medical opinions to the contrary, nor is there any other probative evidence before the Commission indicating that these conditions resulted from some other cause or activity.

In addition, the Full Commission further notes that the claimant's right wrist and elbow injury caused internal physical harm to her body which resulted in disability or the need for medical treatment, as evidenced by the medical treatment that she sought from Dr. Sills and Dr. Kelly. These doctors directed her to refrain from working beginning September 30, 2003, through November 10, 2003. The claimant has also offered evidence of objective findings in the form of a nerve conduction study which revealed right "carpal tunnel syndrome and a right tardy ulnar palsy." As a result, pursuant to these findings, Dr. Kelly diagnosed the claimant with right carpal tunnel syndrome and cubital tunnel syndrome.

While the Full Commission recognizes that an incident occurred on September 29, 2003, wherein the claimant dropped a spatula due to severe right hand pain and other related symptoms, which resulted in her having to seek medical treatment and being taken off work from September 30, 2003 until November 10, 2003, we find that the preponderance of the evidence indicates that the claimant's injury was the result of a gradual onset injury which did not manifest itself or become apparent until September 29, 2003. Such injury is evidenced by the claimant's own credible testimony of problems with her right arm a couple or three months prior to this incident. Moreover, we note that several of the claimant's co-workers corroborated her testimony with respect to prior difficulty with her right arm. With this in mind, based on the above credible evidence, the Full Commission finds that the claimant has proven by a preponderance of the evidence that she suffered a gradual onset injury to her right wrist, in the form of carpal tunnel syndrome, which arose out of and in the course of her employment with respondent, and that the injury was the major cause of her disability or need for treatment. The claimant has also established this injury with objective

medical findings. As to the claimant's right elbow injury [cubital tunnel], we further find that the claimant has established these elements of proof along with the requirement that this injury was caused by job duties that involved rapid repetitive motion. As such, the Full Commission affirms the administrative law judge's finding that "Claimant has met her burden of proving by a preponderance of the evidence that she suffered a gradual onset injury to her right wrist and elbow."

In addition, pursuant to Ark. Code Ann. §11-9-508 (a), the Full Commission finds that the claimant has proven by a preponderance of the evidence that she is entitled to the reasonably necessary medical treatment provided in connection with her compensable right wrist and elbow injury. As such, we therefore affirm the administrative law judge's finding relating only to the claimant's entitlement to all reasonable and necessary medical treatment for her compensable injury.

With respect to temporary total disability benefits, the instant claimant sustained a compensable injury to her right wrist and elbow, a scheduled injury. Ark. Code. Ann. §11-9-521. An employee who has suffered a scheduled injury

is entitled to receive temporary total disability benefits or temporary partial disability during the time that the employee remains within their healing period or until the employee returns to work, whichever occurs first. Wheeler Construction Co. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2001). In the present matter, Dr. Sills directed the claimant to refrain from working when she first sought treatment for her right arm problems on September 29, 2003. Thereafter, Dr. Sills directed the claimant to refrain from working and ordered diagnostic testings, as the claimant's condition continued to worsen. Based on the findings of right wrist carpal tunnel syndrome and cubital tunnel syndrome of the right elbow, Dr. Sills referred the claimant to Dr. Kelly for further evaluation and treatment. In a letter to Dr. Sills dated November 10, 2003, Dr. Kelly released the claimant to return to light-duty work. However, the claimant admitted that she did not return to work for the respondent until November 17, 2003 due to health problems unrelated to her right wrist and elbow. Upon the claimant's return to work on November 17, 2003, the respondent provided the claimant with work within her restrictions. Therefore, the claimant continued working for

the respondent until January 6, 2004, when she voluntarily quit. According to the claimant, she quit her job with the respondent due to her hours being reduced and because her job duties caused continued problems with her hand and elbow. Following this, the claimant drew unemployment compensation benefits for approximately 13 weeks.

Subsequent to this, the claimant worked one and a half days at a retail store stocking artificial flowers. The claimant testified that she was fired because she was unable to provide management with a doctor's excuse for being ill due to symptoms unrelated to her workers' compensation claim. The claimant admitted that she could have continued working had she not been discharged. On June 9, 2004, the claimant returned to work for the respondent performing her old job duties as a grill cook. As of the date of the hearing, the claimant was working for the respondent in this capacity.

In the present matter, the Full Commission finds that the claimant proved that she is entitled to temporary total disability benefits from September 30, 2003, the day after she sought medical treatment for her right arm and wherein Dr. Sills took her off work, and continuing until November 10, 2003, the date that Dr. Kelly indicated she was able to

return to light-duty work. While we recognize that the claimant did not return to work for the respondent until November 17, 2003, this was due to reasons unrelated to her workers' compensation claim. We also note that although the claimant maintains she quit her job with the respondent in January of 2004, in part due to her hours being reduced and because her job duties caused continued problems with her hand; there is no evidence that she had been directed to refrain from working by any treating physician after November 10, 2003, nor is there any probative evidence before the Commission demonstrating that she was unable to work after this time. Moreover, we note that after the claimant quit her employment with respondent in January of 2004, she applied for and received unemployment compensation benefits wherein she attested to "being able and available for suitable work." In light of the foregoing evidence, we find it more probable than not that the claimant has been able to work since her release to light duty work. The Full Commission therefore affirms the administrative law judge's finding that the claimant is entitled temporary total disability benefits from September 30, 2003 through November 10, 2003.

Therefore, having found that the claimant has met her burden of proving a compensable gradual onset injury to her right wrist and elbow; reasonable and necessary medical treatment; and temporary total disability benefits, we must now decide whether respondent #1 or respondent #2 is liable for compensation benefits. The administrative law judge found that the claimant suffered a compensable gradual onset injury to her right wrist and elbow while employed by respondent while respondent #2 was the carrier. As a result, he further found that respondent #2 was liable for all compensation benefits, including all reasonable and necessary medical treatment; and temporary total disability benefits from September 30, 2003 through November 10, 2003. We disagree with the finding that respondent #2 is liable for these compensation benefits. Instead, the Full Commission finds that respondent #1 is liable for the compensation benefits awarded the claimant herein. The case at bar presents an issue of first impression because there are no cases dealing specifically with when liability attaches to a carrier with respect to gradual onset injuries as far as compensability. One theory attaches liability when the injury "manifests" and the

claimant begins to lose time from work and is no longer able to perform his job. This would be when the injury manifested itself and medical attention is required. The other theory would be when the symptoms occurred. With respect to the facts of this case, there was evidence that the claimant was having problems with her right arm prior to when she dropped the spatula on September 29, 2003. The claimant testified that she had been having pain in her right arm a few months prior to the incident of September 29, 2003. This testimony is corroborated by Ms. Akins and Ms. Wagoner, as they both testified that they had observed the claimant having difficulty with her right arm prior to September 29, 2003. However, the claimant did not seek medical treatment until she dropped the spatula. In the case at bar, the Full Commission adopts the "manifestation" approach for determining when liability attaches for claims involving carpal tunnel syndrome and/or gradual onset-type injuries.

Before addressing the specifics of this issue, the Full Commission notes that there are two cases that give us some guidance with respect to whether or not the carrier on the risk at the time of the "manifestation" or the time of the

"symptomology" should be responsible for payment of benefits. However, we note that these cases deal with the applicable statute of limitations period for gradual onset injuries. As such, the first case that we find to be instructive in the present matter is Ham v. Alumicraft Boat Co., Full Commission Opinion filed Dec. 17, 1998 (E708498). The Full Commission found in that case that the statute of limitations did not commence to run until the true extent of the injury manifested and caused an incapacity to earn wages which persisted long enough to entitle the claimant to benefits under Arkansas Code Ann. §11-9-501. In the Ham case, the claimant had been diagnosed with bilateral carpal tunnel syndrome in December of 1993. This diagnosis was based on a positive Tinel's sign bilaterally. However, It was not until 1997 that the claimant ended up losing any time from work as a result of the carpal tunnel syndrome. The respondents in that case argued that the claimant's claim for benefits was barred because the statute of limitations had run. Hence, the respondents argued that the statute of limitations served as a bar to the claimant's claim because she received a diagnosis of carpal tunnel syndrome in 1993, but her claim for compensation was not

filed until 1997. A majority of the Full Commission found that the claimant did not have an incapacity to earn wages and that the full extent of the injury did not manifest itself until she began to lose time from work in 1997. Accordingly, the Full Commission awarded benefits to the claimant.

The second case that is instructive, is Minnesota Mining and Mfg., v. Maria Baker, 337 Ark. 94, 989 S.W. 2d 151 (1999). See also, Pina v. Wal-Mart Stores, Inc., ____ Ark. App. ____, ____ S.W.3d ____ (May 11, 2005). In the Baker case, the Arkansas Supreme Court found that the time of the injury means when an accident becomes compensable, not the date of the accident itself. The Court found that a claimant's injury did not become compensable until he or she suffered a loss of earnings. Again, this case addressed the statute of limitations issue. Specifically, the claimant in Baker had undergone a hearing test on February 23, 1978, which established hearing deficiencies that were made known to the claimant. The Court found that the statute of limitation began to run in February 1978, because the claimant became aware of the hearing loss at that time.

In the present matter, the claimant testified that although she had experienced some pain in her right arm for several months before she lost her grip and dropped the spatula on September 29, 2003, she attributed her pain to a pulled muscle or ligament. Her testimony was corroborated by several of her co-workers. The claimant specifically recalled that she had experienced problems with her arm swelling a few months prior to the incident of September 29, 2003. In addition to this, the claimant admitted that she never mentioned any of her symptoms to the Café's previous, or new owners, until the September 29, 2003 incident. This is when the claimant sought treatment from Dr. Sills. It is noted that prior to this time, the claimant had never sought or received medical treatment by a doctor, chiropractor, or any other professional for any problems relating to her right elbow or wrist until September 29, 2003. Finally, the claimant testified that she had never filed a workers' compensation claim for an injury to her right wrist or elbow prior to September 29, 2003, nor had she applied for Social Security Disability benefits with respect to her right wrist or elbow.

The claimant's co-worker, Ms. Akins, testified that the claimant's job at the Café not only required use of a spatula, but some heavy lifting as well. Ms. Wagoner and Ms. Brownfield agreed that the claimant's job required heavy lifting and that the kitchen staff helped each other carry heavy items out of a sense of team work. According to Ms. Wagoner and Ms. Brownfield, who were both present when the claimant dropped the spatula, it was the first incident of its kind. Similarly, Ms. Hodges corroborated the claimant's testimony that the symptoms arose suddenly on September 29, 2003. Specifically, Ms. Hodges testified that she witnessed when the claimant dropped the spatula and observed that she looked "dumbfounded." The testimony of the claimant and her co-workers strongly support respondent's #2 contention that the true extent of the claimant's injuries did not manifest themselves until September 29, 2003.

Based on the above credible testimony, the Full Commission finds that the true extent of the claimant's injury to her right wrist and elbow did not manifest itself until September 29, 2003. Before that time, as outlined above, the claimant did not believe medical attention was required, nor did she report any problems to her employer.

Moreover, the claimant did not suffer any loss of earnings until September 29, 2003. The claimant testified that before that date she had worked approximately 40 to 50 hours each week. However, after the incident on September 29, 2003, the claimant left work and sought medical care, at which time she was directed to refrain from working and was not released to return to work until November 10, 2003. The claimant continued to work with restrictions from November 17, 2003 until January 6, 2004, when she voluntarily quit her employment with the Café primarily due to business being slow and her hours being reduced. Hence, prior to September 29, 2003, the claimant did not suffer any loss of income.

Simply put, we cannot find that respondent carrier #2 is responsible for any workers' compensation benefits. The claimant did not have a diagnosis of carpal tunnel syndrome prior to the second carrier (respondent #1) coming on to the risk nor did she lose any time from work. Although there was evidence that the claimant had complained of pain, weakness, and related symptoms with her right arm, there is no evidence that she thought it was a work-related injury. It was not until the claimant dropped the spatula at work on September 29, 2003, while respondent #1 was the

carrier that she realized she had a work-related injury. Accordingly, the Full Commission finds that respondent carrier #1 is liable for payment of any compensation benefits due to the claimant. Therefore, we reverse the administrative law finding that respondent #2 is liable for all compensation benefits; instead, we find that respondent #1 is liable for these compensation benefits.

Based on our *de novo* review of the entire record, the Full Commission affirms the administrative law judge's finding that the claimant has proven by a preponderance of the evidence that she suffered a compensable gradual onset injury to her right wrist and elbow while employed by the respondent/Cottage Café. We affirm the administrative law judge's finding that the claimant is entitled to payment for all reasonable and necessary medical treatment; and temporary total disability compensation beginning September 30, 2003 and continuing through November 10, 2003. However, the Full Commission reverses the administrative law judge's finding that respondent #2 is liable for the compensation and benefits awarded for the claimant's compensable gradual onset injury to her right wrist and elbow. Instead, we find that respondent #1 was the compensation carrier at the time

wherein the claimant suffered her compensable injury. As a result, the Full Commission finds that respondent #1 is liable for payment of all reasonable and necessary medical treatment, and temporary total disability compensation from September 30, 2003 through November 10, 2003. The Full Commission therefore affirms in part and reverses in part the opinion of the administrative law judge.

For prevailing on this appeal before the Full Commission, the claimant's attorney is entitled to a fee of \$500.00 pursuant to Ark. Code Ann. § 11-9-715(b)(2) (Repl. 2002).

_____IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.