

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO.D400839

JUDY A. STURGEON, EMPLOYEE	CLAIMANT
K-MART CORPORATION, EMPLOYER	RESPONDENT
CAMBRIDGE INTEGRATED SERVICES, CARRIER	RESPONDENT

**OPINION FILED AUGUST 12, 2005**

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

Claimant represented by HONORABLE PHILLIP H. McMATH, Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE LEE MULDROW, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

**OPINION AND ORDER**

The claimant appeals from a decision of the Administrative Law Judge filed October 14, 2004.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. The Workers' Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties on November 11, 1983, at which time the claimant sustained a compensable neck injury at a compensation rate of \$129.93. Medical expenses, temporary total disability benefits and a 20% permanent impairment have been paid.

2. The claimant has failed to prove by a preponderance of the credible evidence of record that her development of bilateral CTS in 1995 is causally related to the 1983 compensable neck injury.

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.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

**DISSENTING OPINION**

The Majority is affirming and adopting an Administrative Law Judge's decision to deny the claimant benefits based upon injuries to her wrists. Since the accident date for this injury is in 1983, this Commission is obligated to apply the Workers' Compensation Act as it existed at that time. I find that, under the prior, controlling law, the claimant's injury was compensable and accordingly, the Administrative Law Judge's decision should be reversed and benefits awarded. For that reason, I respectfully dissent from the Majority's opinion.

The claimant sustained a compensable injury on November 11, 1983. The injury occurred when the claimant and a co-employee were arranging a display of merchandise and a number of boxes fell on her, knocking her to the floor. The claimant attempted to resume these duties when, once again, she was struck by falling boxes.

The respondent accepted liability for the claimant's neck injuries and provided her medical and disability benefits. A dispute later arose regarding

additional benefits the claimant was seeking and this was the subject of a hearing in October 1985. In a decision rendered on October 7, 1985, the claimant was awarded additional TTD benefits. Later, the respondent voluntarily provided medical treatment in the form of two cervical fusions in the claimant's neck, as well as related temporary and permanent disability benefits.

The present dispute concerns whether the claimant sustained traumatic wrist injuries in the 1983 accident. The earliest medical reports contained in the record are from January 9, 1995. In a report of that date Dr. Wilbur Giles, a Little Rock neurosurgeon who has now retired, discussed the possibility of the claimant having carpal tunnel syndrome. Based on subsequent nerve conduction studies, Dr. Giles diagnosed the claimant with bilateral carpal tunnel syndrome. However, he was also of the opinion that some of the claimant's symptoms were caused by an underlying cervical problem. Consequently, in April 1995, she underwent the second of her two cervical fusions. Dr. Giles later performed carpal tunnel releases on the claimant on September 30, 2002 and October 7, 2002.

The claimant contends that the carpal tunnel condition which Dr. Giles discussed in 1995 and surgically treated in 2002, was the result of her original compensable injury. She further contends that the respondent is liable for payment of the medical treatment she received for the carpal tunnel condition and is obligated to pay her appropriate permanent disability benefits.

The respondent contends that any injury the claimant sustained in her 1983 accident was to her neck and not to her hand and wrist and that her carpal tunnel syndrome is not related to her employment. On that basis, they object to paying any medical or disability benefits related to that condition.

In an Opinion dated October 14, 2004, an Administrative Law Judge found that the claimant did not establish, by a preponderance of the evidence, that her carpal tunnel syndrome was causally related to her 1983 accident. The Judge further found that there was no connection between the claimant's compensable neck injury and the development of her carpal tunnel syndrome.

In applying the Workers' Compensation Act, as it existed at the time of the claimant's 1983 injury, the

Commission is required to follow a liberal approach and draw all reasonable inferences favorable to the claimant. The Commission is also charged with the duty of giving the claimant the benefit of the doubt in resolving factual issues. **Boyd v. General Industries**, 22 Ark. App. 103, 733 S.W. 750 (1987). Applying that standard to the present case, it is apparent that the claimant suffered a compensable injury. The fact that a different result might be reached were the current standards applied is irrelevant. This case is based upon an injury that occurred in 1983 in which the Workers' Compensation Act was substantially different.

In applying the former standard to the present case, I find that the claimant has met her burden of proof. In describing her accident, the claimant stated that the boxes fell, striking her head and neck, and knocking her to the floor. The claimant also described the accident as injuring her entire body and that she felt immediate pain in her hands and wrists after she fell.

During her examination, the claimant explained that the pain in her wrist had been constant following her accident:

Q: Anyway, did you have trouble -  
what kind of problem have you

had with your hands related to carpal tunnel syndrome, the symptoms? Would you explain that?

A: The carpal tunnel is what Dr. Giles explained that I was experiencing by having the pains reaching to my fingers, the inability to use my hands periodically. ***I had for about the first ten years,*** I would wake up with pain to my elbows, and then ongoing, I do not feel. After the surgery, I had constant, and I still do, constant burning to my fingertips with pain. (Emphasis added).

Q: Well, these problems with your hands that you've described, were they there from the time of the accident in November 1983 until then?

A: Yes.

Q: All right. So you experienced them immediately at the time of the accident?

A: Yes.

Q: And then when you had the surgeries, the two cervical fusions that were done in 1986 and 1995, did they alleviate the problem of your hands?

A: It eased up. I had more hand function, better hand function.

Contrary to the finding of the Administrative Law Judge, carpal tunnel syndrome was clearly present at the time of the accident and continued even after the claimant's cervical fusions. The latter fact is significant in that it indicates that the claimant's hand problems were not due entirely to the injuries to her neck. Dr. Giles recognized this in 1995 when he treated the claimant's carpal tunnel syndrome and her neck problems as separate conditions which he surgically treated on different occasions. Further, the nerve conduction study performed in 1995 denoted the presence of carpal tunnel syndrome independent of the claimant's neck problems.

I also note that the most likely source of the claimant's carpal tunnel syndrome would have been the accident in 1983. The claimant testified that the effect of the boxes falling on her were to knock her to the floor. It is quite likely in such a circumstance her hands and wrist would have struck the floor as she fell. Further, a review of the claimant's job description suggests that her jobs with the respondent employer were not the type of hand intensive, rapid jobs that generally cause cumulative trauma carpal tunnel syndrome. The claimant testified that her

duties were generally in a supervisory capacity and required her to undertake a variety of tasks.

I find that it is a reasonable inference that the claimant suffered compensable injuries to both of her wrists at the time of her 1983 accident. It is a further reasonable inference that the injuries to her wrists caused her to develop carpal tunnel syndrome which existed simultaneously with her neck problems until she underwent carpal tunnel surgery in 2002. Further, giving the claimant the benefit of the doubt, I find that she continues to suffer problems with her hands and wrists and that she is entitled to continuing medical treatment for those conditions. I further find that she should be entitled to receive temporary total disability benefits during the times in which she had reentered her healing period and was directed to remain off work by her doctor, including the periods of September 27, 2002 to January 6, 2003; January 31, 2003 to February 7, 2003; July 22, 2003 to November 4, 2003; and November 12, 2003 to a date yet to be determined. Further, she should also receive temporary partial disability from the period of February 8, 2003 to February 24, 2003.

It is true that the legislature has altered the Workers' Compensation Act to require the Commission to no longer give claimants the benefit of the doubt or to liberally construe the Workers' Compensation Act. However, under the standard of the Workers' Compensation Act, as it existed on November 11, 1983, I believe this Commission should find that the claimant's carpal tunnel syndrome resulted from the injuries she sustained in her compensable accident of November 11, 1983.

In denying this claim, I do not believe that the Majority has liberally construed the revisions of this Act and has not resolved the reasonable doubts and inferences in favor of the claimant as we are required to do. For that reason, I must respectfully dissent from Majority's denial of benefits in this claim.

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SHELBY W. TURNER, Commissioner