NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F003542

HAROLD SCOTT,
EMPLOYEE CLAIMANT

AREA AGENCY ON AGING SE ARK., INC.,
EMPLOYER RESPONDENT

RISK MANAGEMENT RESOURCES,
INSURANCE CARRIER RESPONDENT

OPINION FILED JULY 6, 2005

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

Claimant represented by HONORABLE PHILIP WILSON, Attorney at Law, Little Rock, Arkansas.

Respondents represented by HONORABLE MICHAEL J. DENNIS, Attorney at Law, Pine Bluff, Arkansas.

Decision of the Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

This case comes on for review by the Full Commission on appeal by respondents from an opinion filed herein by an Administrative Law Judge on September 22, 2004.

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

1. Claimant has proven, by a preponderance of the evidence, that his right carpal tunnel syndrome complaints are a result of his March 8, 2000, work-related

injury, within a reasonable degree of medical certainty.

2. Claimant is entitled to treatment, both past and future, for complaints associated with his right carpal tunnel syndrome.

3. Claimant is entitled to a 3 percent impairment rating in regard to his right carpal tunnel syndrome, pursuant to Dr. Peeple's letter opinion of May 6, 2003.

4. Respondents have controverted the impairment rating and all benefits associated with treatment for claimant's right carpal tunnel syndrome.

We have carefully conducted a de novo review of the entire record herein, and it is our opinion that the decision of the Administrative Law Judge is correct 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.

We therefore affirm the September 22, 2004 opinion of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the opinion as the decision of the Full Commission. 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 prior to July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as it existed prior to the amendments of 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 $250.00 in accordance with Ark. Code Ann. § 11-9-715 (Repl. 1996).

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I respectfully dissent from the majority opinion finding, in relevant part, that the claimant's carpal tunnel syndrome arose during the course and scope of his employment with the respondent employer.

My carefully conducted de novo review of the record reveals that the claimant has failed to prove by a preponderance of the evidence that his carpal tunnel syndrome arose from and out of his employment with the respondent employer.

The claimant sustained an admittedly compensable injury on March 8, 2000, when he attempted to pick up a cooler filled with cartons of milk. Thereafter, the claimant reported experiencing a sudden onset of right shoulder pain for which he was seen and evaluated by Dr. Herbert Hahn. By March 17, 2000, Dr. Hahn had diagnosed the claimant with a strain/sprain of the right posterior shoulder. Resulting spasms from the claimant's muscle strain reportedly produced pain down his right arm. Accordingly, Dr. Hahn prescribed the claimant pain medications, anti-inflammatories, and steroids. In addition, Dr. Hahn instructed the claimant to limit the use of his right arm.

When after approximately two weeks post-injury the claimant's condition did not show significant improvement, Dr. Hahn updated his diagnosis to a torn muscle, medial to claimant's right scapula. Dr. Hahn continued to treat the claimant conservatively with pain

medications and work restrictions. On May 2, 2000, an MRI of the claimant's right shoulder revealed negative results.

In June of 2000, Dr. Charles Pearce reported that the claimant was complaining of radiating right arm pain, with stabbing discomfort, as well as "achy discomfort" in his right shoulder with tingling and numbness into his fingers. Suspecting a herniated cervical disc, Dr. Pearce recommended an MRI of the claimant's cervical spine be conducted. This test revealed multi-level degenerative disc disease with multi-level foraminal narrowing, but no herniation. Based upon his findings, Dr. Pearce diagnosed the claimant with adhesive capsulitis of the right shoulder and degenerative disc disease with multi-level foraminal narrowing of the cervical spine. Dr. Pearce gave the claimant a steroid injection in his right shoulder and referred him to see Dr. Yeshwant Reddy, a pain specialist.

The claimant was first examined by Dr. Reddy on August 31, 2000, at which time Dr. Reddy summarized the claimant's condition and treatment as follows:

> Mr. Scott is a 66-year-old gentleman who reports a work related accident

> on March 8, 2000. ... He stated that his initial most severe pain was in the shoulder, but later involved both the neck and arm. ... Today in the clinic, Mr. Scott states that he has had neck and right arm pain since the time of his accident on March 8th. He is having severe neck pain, ... with radiation into the posterior aspect of the shoulder and also involving the little and ring fingers of the right hand. There is associated tingling and numbness of these fingers. ... Thus far his treatment has included obtaining an MRI of the shoulder and cervical spine. He had shoulder injections, as well as local trigger point injections with partial benefit only. Presently, he is not on any medications, although in the past he used Lorcet, Flexeril, and Vioxx with only partial improvement.

Based upon his examination and review of the medical records, Dr. Reddy assessed the claimant primarily with “underlying multi-level degenerative disc disease in the cervical spine, causing right arm radiculopathy, probably secondary to his work related accident.” Per Dr. Reddy’s orders, the claimant underwent a “trial of epidural steroid injection.” When the claimant’s condition reportedly did not improve after ten months of conservative treatment, Dr. Reddy ordered a NCE study to rule out C7 radiculopathy. The results of this study, which was performed on January 8,

2001, were normal for both the median and ulnar nerves of the claimant's right arm.

The record reflects that the claimant returned to Dr. Hahn on February 26, 2001. Dr. Hahn continued the claimant off of work, and he referred the claimant to Dr. Scott Schlesinger for a cervical consultation. Based upon his examination of the claimant on March 29, 2001, and a review of his medical records, Dr. Schlesinger opined that the claimant's pain originated from his shoulder joint, and that he had degenerative arthritis in his cervical spine. In order to rule out nerve root compression as a possible source of he claimant's arm pain, Dr. Schlesinger ordered a repeat MRI of the claimant's cervical spine. This test confirmed multi-level cervical spondylosis with a degree of multi-level foraminal narrowing. Stating in his report dated April 9, 2001, that the claimant's case was "very difficult and challenging," Dr. Schlesinger opined that a myelo-CT scan, EMG, and a nerve conduction study may be necessary to pinpoint the exact nature of the claimant's pain. Dr. Schlesinger released the claimant to light duty on April 19, 2001. Subsequently, a functional capacity evaluation was performed on May 10, 2001, the results of

which indicated that the claimant was able to perform work in the “light” category.

The record reflects that the claimant was seen next by Dr. Hahn on February 25, 2002, nearly ten months after he was last seen for his symptoms by Dr. Schlesinger. In his report of that visit, Dr. Hahn states, “Patient returns in follow up of cervical disc, right shoulder and distal right upper extremity nerve entrapment type picture.” Dr. Hahn assessed him with traction neuropraxia and cervical disc syndrome. The claimant returned to Dr. Hahn on April 8, 2002, at which time he demonstrated a gradual decrease in nerve function in his right hand. On June 17, 2002, more than two years after the claimant’s compensable injury, another nerve conduction study conducted by Dr. Hahn showed the presence of ulnar nerve entrapment and carpal tunnel syndrome. Accordingly, Dr. Hahn referred the claimant to Dr. Peeples for an evaluation. Subsequently, the claimant underwent a right ulnar nerve release and carpal tunnel syndrome surgery on August 26, 2002. The claimant made a good recovery from his surgery and on May 6, 2003, Dr. Peeples assigned the claimant with a 7% impairment rating to his upper body, 3% of which he

attributed to carpal tunnel syndrome release and 4% to ulnar nerve transposition.

On June 4, 2004, Dr. Hahn testified in deposition concerning the claimant’s treatment and outcome. Dr. Hahn admitted that he initially would not have connected carpal tunnel syndrome with the claimant’s injury.

> Carpal tunnel, if you’d asked me, do you think this is carpal tunnel syndrome when I first met Mr. Scott, the answer would be no. If you said, do you think he has a traction injury to the arm, then I would say yes.

In further testimony, Dr. Hahn admitted that had the claimant’s injury in 2000 resulted in carpal tunnel syndrome, it is unlikely that the claimant’s neurodiagnostic testing conducted ten months later would have come back within normal limits, as was the case. In later testimony Dr. Hahn clarified earlier statements that he had made concerning the cause of the claimant’s carpal tunnel syndrome, as follows:

> But I would say by no means do I feel confident that I could say absolutely, this is the causation. That is not what I’m saying. I was asked to give my 50 percent best opinion, and my 50 percent best opinion, the way he got hurt, what

> his symptoms were, go along with the process that he ended up being treated for.

Dr. Hahn admitted that he could not rule out age and arthritis as causative factors in the claimant's carpal tunnel syndrome. Moreover, Dr. Hahn was unaware at the time that he formed his opinion that the claimant had retired from welding after twenty-five years before taking the job with the respondent employer. As to whether a history of repetitive overuse could have contributed to the claimant's carpal tunnel syndrome, Dr. Hahn stated:

> If he has a – - that would be one of the few things where an overuse history of repetitive movement or powerful use of the upper extremities would potentially be causative of it, and it would also be potentially one of the things that would contribute to its development later.

In his final testimony, Dr. Hahn reaffirmed the following statements he made in a letter dated December 23, 2003:

> It is my opinion that the carpal tunnel syndrome on the right upper extremity is more than 50% related, but by no means the source of all the impairment to the right upper extremity.

In that same letter, Dr. Hahn admitted that the claimant has "persistent complaints which remain a mystery."

For the claimant to establish a compensable injury as a result of a specific incident which is identifiable by time and place of occurrence, the following requirements of Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2002), must be established: (1) proof by a preponderance of the evidence of an injury arising out of and in the course of employment; (2) proof by a preponderance of the evidence that the injury caused internal or external physical harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings, as defined in Ark. Code Ann. §11-9-102(16), establishing the injury; and (4) proof by a preponderance of the evidence that the injury was caused by a specific incident and is identifiable by time and place of occurrence. If the claimant fails to establish by a preponderance of the evidence any of the requirements for establishing the compensability of a claim, compensation must be denied. Mikel v. Engineered Specialty Plastics, 56 Ark. App. 126, 938 S.W.2d 876

(1997). For a specific incident injury, it is not necessary that the claimant prove that the injury is the major cause or need for treatment. Estridge v. Waste Mgmt., 343 Ark. 276, 33 S.W.3d 167 (2000).

Because the claimant asserts that his carpal tunnel syndrome arose out of a specific incident identifiable by time and place of occurrence, however, namely his compensable injury of March 2000, the claimant must prove by a preponderance of the evidence those requirements set forth in Ark. Code Ann. §11-9-102(4)(A)(i)(Repl. 2002). In my opinion, the claimant has failed to meet his burden of proof, specifically in that he has failed to prove that his carpal tunnel syndrome arose out of and in the course of his employment with the respondent employer. Based upon the above summary of the claimant’s medical treatment, it is evident that the claimant sustained a pull-stretch type injury to his right shoulder while lifting a cooler of drinks on March 8, 2000. This injury was accepted as compensable and appropriate medical benefits were paid in association therewith. Although the claimant’s problems were originally thought to be confined to his shoulder, the focus of the medical inquiry eventually

moved down the claimant’s right arm from his shoulder and neck area, to his elbow and wrist. An MRI of the claimant’s cervical spine conducted fairly early on revealed degenerative type problems at multiple levels, which was thought to be consistent with someone the claimant’s age. When after 10 months of conservative treatment, however, the claimant’s symptoms refused to resolve, a nerve conduction study of the claimant’s right arm was conducted which showed normal results. The claimant did not receive medical treatment for his compensable injury for several months thereafter. Finally, after nearly two years of treatment, additional diagnostic testing revealed right ulnar nerve compression and right carpal tunnel syndrome. The claimant underwent ulnar decompression surgery at this elbow, for which the respondent accepted liability. The respondent denies liability for the claimant’s carpal tunnel syndrome surgery which was performed at the same time as his elbow surgery.

Although the claimant sustained a specific incident injury to his right shoulder in March of 2000, which caused an apparent traction injury, the evidence does not preponderate in favor of this injury causing

the claimant’s carpal tunnel syndrome. Furthermore, the objective medical evidence does not support such a conclusion. Rather, given the claimant’s age and prior work history, it is more likely than not that the claimant’s carpal tunnel syndrome resulted from some other, unknown cause. In light of the fact that the first nerve conduction test, which was conducted ten months after the claimant’s injury, did not reveal carpal tunnel syndrome, the claimant’s eventual diagnosis was simply too far removed from his injury for there to be a plausible connection. Moreover, Dr. Hahn never opined within a reasonable degree of medical certainty that the claimant’s carpal tunnel syndrome was caused by his compensable injury. Instead, Dr. Hahn stated that the claimant’s carpal tunnel syndrome “is more than 50% related” to his right upper body impairment, but that he could not say absolutely that the claimant’s injury caused his carpal tunnel syndrome.

Moreover, at no time did the claimant ever allege complaints consistent with carpal tunnel syndrome.

Pursuant to its authority and purpose as stated in Rule 37(I) of the Arkansas Worker’s

Compensation Rules, the Commission sets forth medical diagnostic and treatment guidelines for carpal tunnel syndrome (CTS)as follows:

> III. Carpal tunnel syndrome (CTS) is caused by compression of the medical nerve at the wrist. Occupational CTS (OCTS)is assumes a work-relatedness. Compared to non-occupational CTS, OCTS patients are younger and have generally less severe changes on nerve conduction studies (NCS), and are about equally male or female. Diabetes, pregnancy, hypothyroidism, and rheumatoid and other inflammatory arthritides are health problems occasionally associated with CTS.

More specifically as it applies to the current case, Rule 37(IV)(B)(1)(a), which concerns diagnosis and symptoms related to CTS, states:

> (a) Paresthesias in the hand - usually the **first three digits** of the hand. However, patients often don’t discriminate between some or all of the digits. Symptoms appropriate to the median nerve distribution are sensitive (0.93 or 7% false negative) but also have low specificity (0.25 or 75% false positives). (Emphasis added)

Clearly, pursuant to the Rules of the Arkansas Worker’s Compensation Commission, the claimant’s initial complaints were not consistent with CTS. Rather, the

symptoms which were exhibited by the claimant contemporaneously with the time of his injury, were consistent with ulnar entrapment at the elbow. As previously discussed, the respondent has accepted liability and paid benefits associated with the claimant's ulnar entrapment.

In my opinion, the claimant has failed to prove by a preponderance of the evidence that his carpal tunnel arose out of and in the course of his employment. Therefore, for those reasons stated herein, I respectfully dissent from the majority opinion.

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KAREN H. McKINNEY, Commissioner