

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F402646

MARGUERITE TAGGART, EMPLOYEE	CLAIMANT
INTERNATIONAL PAPER COMPANY, EMPLOYER	RESPONDENT
SEDGWICK CLAIMS MANAGEMENT, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JUNE 15, 2005

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

Claimant appears pro se.

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

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed November 18, 2004. The administrative law
judge found that the claimant proved she sustained a
compensable injury. The administrative law judge found that
the claimant proved she was entitled to temporary total
disability compensation from February 26, 2004 to June 1,
2004. After reviewing the entire record *de novo*, the Full

Commission affirms the opinion of the administrative law judge.

I. HISTORY

Marguerite Taggart, age 43, testified that she began working for International Paper on September 30, 2002. The claimant testified that her job title was Process Specialist II, and that her work for the respondent-employer involved putting a core into a winder and pulling paper. The administrative law judge examined the *pro se* claimant:

Q. Okay, then what?

A. Then we might be threading up the extruder. We have to get up in the machine and thread the paper and pull it here and there. It threads up actually like a machine, like a sewing machine like you take the thread all the way around like that. The paper goes like that.

Q. Okay. Now you're using hand motions. You have to describe exactly what you do on your job.

A. Well, you take the paper and put it through over one roll, and then it might go under another roll, and you pull it toward another roll.

Q. Are you physically using your hands to push the paper?

A. Yes, ma'am, you're using your hands at all times.

Q. You're pushing the paper and pulling the paper?

A. Yes, ma'am.

Q. To get it positioned on the winder or -

A. On the extruder so it can wind up on a spool.

Q. And then the spool is ejected?

A. Well, we have to take the crane and lift up the roll of paper and take it from the extruder to the winder.

Q. How do you operate the crane?

A. With our hands, both hands.

Q. Are you pushing buttons?

A. We're pushing buttons with both hands.

Q. Okay. So putting the paper on the winder, feeding it through the extruder, pushing the buttons on the crane. What else do you do?

A. Slab and roll the paper. The #2 helper, that's actually his job, but you know, sometimes we just help them if the slab on the spool is too big, then we're all helping slab the paper, and that's when you've got a knife in your hand and you're slabbing it down to the spool to get the paper off.

Q. Okay. How do you use the knife?

A. You hold it in your hand like this.

Q. Both hands?

A. Yes, ma'am. Some people can use one, but I have to use both hands.

Q. And what motion are you doing with the knife?

A. You're pushing it.

Q. Pushing it with the knife?

A. Yes.

The claimant testified that she performed this activity for eight hours daily.

The parties stipulated that the employment relationship existed "during December 2003 - February 2004." The claimant testified that she had "numbness" in her fingers, and "I couldn't control the movement in my hand. Sometimes I would pick up stuff and it would just fall out."

The claimant presented to Dr. Larry L. Nguyen on February 26, 2004:

This is a new patient. She complains of bilateral hand numbness and tingling, worse on the right than the left. She is a 42 year old black female, right hand dominant. She works at International Paper, loading machinery. She complains of right worse than left hand tingling. This has been going on for about three months and is worsening. She is having trouble lifting and doing repetitive activities at work....

X-rays of both hands, AP and lateral views, show no osseous abnormalities.

Dr. Nguyen's impression was "bilateral carpal tunnel syndrome." Dr. Nguyen stated, "Since she is not able to

work at this time, we will keep her off work and do an EMG test with Dr. Lal."

Electrodiagnostic testing was carried out on March 7, 2004, with the following impression:

Electrodiagnostic evidence of BILATERAL focal entrapment of the median nerve at the wrist consistent with Carpal Tunnel syndrome. Right side is moderately severely involved while the left side is moderately involved. No EDX evidence of bilateral ulnar or radial neuropathy.

Dr. Nguyen noted on March 22, 2004, "EMG study results show bilateral carpal tunnel syndrome, worse on the right than on the left." Dr. Nguyen's impression was "bilateral carpal tunnel syndrome," and he planned the following: "At this point the patient wishes to go ahead with outpatient surgery, Bier block anesthesia, 30 minutes, right carpal tunnel release. She will need 6-8 weeks, one arm duty, then proceeding with the other side and then another 6-8 weeks off. She will bring her short term disability papers and I will see her back for surgery."

Dr. Nguyen performed a right carpal tunnel release on March 29, 2004. Dr. Nguyen wrote on March 30, 2004:

The patient has severe bilateral carpal tunnel syndrome, worse on the right than on the left. As defined by Arkansas State Law this may probably be

caused or aggravated by a chronic repetitive type work activities similar to this patient's machinery loading manual activities, so I think within a reasonable degree of medical certainty this is probably related to her work functions. She recently had a right carpal tunnel release and will need to be a one armed duty or off work if no such job is available for 6-8 weeks.

The claimant agreed at hearing that she returned to work on June 2, 2004.

A pre-hearing order was filed on June 23, 2004. The claimant contended that she "developed bilateral carpal tunnel syndrome (CTS) as a result of her job duties. The symptoms began in December, 2003 and grew worse." The claimant contended that she was entitled to temporary total disability compensation "from February 22, 2004 to June 2, 2004 and payment of medical bills associated with Dr. Nguyen's treatment."

The parties agreed to litigate the following issues: "Compensability (bilateral carpal tunnel syndrome); medical expenses and temporary total disability benefits."

A hearing was held on August 20, 2004. Kenneth May testified that he had been employed with International Paper since 1987, and that his current position was "temporary process manager for the extruder department." Mr. May

testified that he had been the claimant's foreman since May 2004, and he essentially opined that the claimant was performing hand-intensive duties for only a small fraction of her work day.

The administrative law judge found, in pertinent part:

2. The claimant has proven ... that she sustained a gradual injury arising out of and in the course of her employment which produced physical bodily harm, supported by objective findings, which was the major cause of disability or the need for medical treatment.

3. The claimant has proven ... that she is entitled to temporary total disability benefits from February 26, 2004 to June 1, 2004, as she was in a healing period and not working based on Dr. Nguyen's medical records. This award is subject to an offset for benefits paid from the employer's group accident policy.

4. The respondents are directed to pay all reasonable and necessary medical expenses within thirty days of receipt. This award is subject to an offset for expenses paid by Blue Cross Blue Shield. Blue Cross Blue Shield will be notified of these proceedings and given an opportunity to file a lien.

The respondents appeal to the Full Commission.

II. ADJUDICATION

Ark. Code Ann. §11-9-102(4) (A) defines "compensable injury":

(ii) An injury causing internal or external physical harm to the body and 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[.]

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4) (D). The claimant's burden of proof shall be a preponderance of the evidence, and 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).

In the present matter, the Full Commission affirms the administrative law judge's decision. The claimant, who the Commission finds was a credible witness, began performing hand-intensive work for the respondent-employer in September 2002. The claimant testified that she eventually began feeling numbness in her fingers along with an inability to hold onto objects. The claimant began seeking medical treatment for her hands in February 2004. The reports of the treating physician, Dr. Nguyen, corroborate the claimant's credible testimony. The claimant complained to Dr. Nguyen of bilateral hand numbness and tingling, worse on

the right then the left. Dr. Nguyen noted that these complaints were related to the claimant's work for the respondents. Dr. Nguyen's impression was "bilateral carpal tunnel syndrome." The Full Commission recognizes the testimony of Kenneth May, which testimony reflected Mr. May's opinion that the claimant was not performing hand-intensive work for the entirety of the claimant's shift. Nevertheless, Mr. May's testimony also indicated that he did not become the claimant's supervisor until after the claimant began seeking medical treatment for her hands. We are unable to determine that Kenneth May had any personal knowledge with regard to when the claimant's work-related symptoms arose.

Dr. Nguyen noted on February 26, 2004 that the claimant was unable to work, and he scheduled additional diagnostic testing. An electro-diagnostic test in March 2004 showed objective evidence of "bilateral focal entrapment of the median nerve at the wrist consistent with carpal tunnel syndrome. Right side is moderately severely involved while the left side is moderately involved." Dr. Nguyen performed a right carpal tunnel release on March 29, 2004, and the claimant was not able to return to work on June 2, 2004.

Neither the medical records nor the claimant's testimony indicated that she underwent surgery on the left.

The preponderance of evidence therefore indicates that the claimant sustained a compensable injury in the form of bilateral carpal tunnel syndrome, which injury caused physical harm to the claimant's body and arose out of and in the course of the claimant's employment with the respondents. The claimant's compensable bilateral carpal tunnel syndrome injury was established by medical evidence supported by objective findings, namely the diagnostic testing carried out on March 7, 2004, along with the surgical findings of Dr. Nguyen which were introduced into the record. The Full Commission is aware of Dr. Nguyen's March 30, 2004 correspondence which reiterated Dr. Nguyen's expert opinion that the claimant had sustained bilateral carpal tunnel syndrome. Dr. Nguyen wrote, "As defined by Arkansas State Law this may probably be caused or aggravated by a chronic repetitive type work activities (sic) similar to this patient's machinery loading manual activities, so I think within a reasonable degree of medical certainty this is probably related to her work functions."

First, Dr. Nguyen's March 30 correspondence did not address whether or not he thought the claimant's compensable injury was the major cause of her disability or need for treatment, pursuant to Ark. Code Ann. §11-9-102(4)(E)(ii). Instead, Dr. Nguyen's letter appears to discuss whether or not the claimant's symptoms arose out of and in the course of the claimant's employment with the respondents. In any event, when a medical opinion is sufficiently clear to remove any reason for the trier of fact to have to guess at the cause of the injury, that opinion is stated within a reasonable degree of medical certainty. Huffy Service First v. Ledbetter, 76 Ark. App. 533, 69 S.W.3d 449 (2002), citing Howell v. Scroll Tech., 343 Ark. 297, 35 S.W.3d 800 (2001). Expert opinions based on "could," "may," or "possibly" lack the definiteness required to prove the causal connection. Frances v. Gaylord Container Corp., 341 Ark. 527, 20 S.W.3d 280 (2000).

Dr. Nguyen in the present matter stated that the claimant's symptoms were "probably related to her work functions." The Full Commission has explicitly found that the word "probably" satisfies the statutory requirement of reasonable medical certainty found in Ark. Code Ann. §11-9-

102(16) (B). See, Guerra v. Langston Gin Co. Inc., Workers' Compensation Commission F005245 (Jan. 5, 2004), citing Wackenhut Corp. v. Jones, 73 Ark. App. 158, 40 S.W.3d 333 (2001). The Full Commission finds that Dr. Nguyen's opinion written on March 30, 2004 was stated with sufficient medical certainty to find that the claimant's bilateral carpal tunnel syndrome arose out of and in the course of her employment with the respondents. The Full Commission also finds that the claimant proved, by a preponderance of the evidence, that her compensable bilateral carpal tunnel syndrome injury was the major cause of her disability and need for treatment.

Based on our *de novo* review of the entire record, the Full Commission affirms all of the findings of the administrative law judge. The Full Commission finds that the claimant sustained a compensable injury in the form of bilateral carpal tunnel syndrome, which injury caused physical harm to the body and arose out of and in the course of the claimant's employment with the respondents. The claimant's compensable injury was established by medical evidence supported by objective findings. The claimant proved by a preponderance of the evidence that the

compensable injury was the major cause of the claimant's disability and need for treatment. The record indicates that the claimant remained within a healing period and did not return to work beginning February 26, 2004 until June 2, 2004. The Full Commission therefore affirms the administrative law judge's finding that the claimant proved she was entitled to temporary total disability compensation from February 26, 2004 until June 1, 2004. See, Wheeler Constr. Co. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2001).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion finding that the claimant proved by a preponderance of the evidence that she sustained a compensable injury in the form of carpal tunnel

syndrome. Based upon my de novo review of the record, I find that the claimant failed to meet her burden of proof.

The claimant, age 43, has a high school education and sporadic work history since 1999 as a cook, waitress, cashier, manager and fork lift driver. She was a homemaker before she began work for the respondent-employer on September 30, 2002. From 1987 through 1991 the claimant was in prison. She took some training as a welder and received a cosmetologist license in 1987, working three months as a hairdresser.

The claimant contends that she developed symptoms in the fall of 2003 which gradually worsened, as a result of her job duties as a Process Specialist II. She described her job duties as feeding scrip paper through a shredder, pulling on paper, measuring cores with a tape measure, taping down the paper, cutting the paper with a knife, and pushing buttons. However, she also described a period of time during each cycle that she waited for the machine to wind the paper. Mr. Ken May, the claimant's foreman, testified the time was less and that generally 4-5 spools were finished per hour.

During the week of February 9, 2002, the claimant testified that she broke the winder on her machine while trying to load a roll of paper because of numbness in her fingers. She notified her supervisor, Mr. May and maintenance had to be called to fix the machine. When Mr. May testified however, he denied any knowledge about this incident. He stated this would have been memorable since a broken winder would have stopped production. On February 22, 2004, the claimant was sent to the occupational health office by her supervisor, Steve Taylor, due to her complaints of symptoms.

Mr. May has worked for the respondent employer since 1987. He reviewed the claimant's job duties. He testified the cores the claimant is required to lift weight between 3 and 7 pounds. He stated that there was sporadic use of a tape measure and there was a labor union mandated crew helping with the slabbing process, so it would be unusual for the claimant to do this task. He stated she would be performing the other tasks as described 30 times in an 8-hour shift, only if production was running smoothly at maximum capacity. Part of the claimant's time would be spent waiting on

the machinery to finish or cleaning up around her station. Mr. May stated that the claimant was not actually operating the winder on a continuous basis. The majority gives little weight to Mr. May's testimony because he was not the claimant's supervisor when she sought treatment and had no knowledge of when the claimant's symptoms arose. However, Mr. May, as the claimant's supervisor was very familiar with the claimant's job duties. Therefore, I give his testimony great weight.

Accordingly, for all the reasons set forth herein, I must respectfully dissent from the majority opinion.

KAREN H. MCKINNEY, Commissioner