

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F209440

WILLIAM F. WARREN,  
EMPLOYEE

CLAIMANT

H & L POULTRY PROCESSING LLC,  
EMPLOYER

RESPONDENT NO. 1

SECURITY INSURANCE CO. OF HARTFORD,  
C/O THE INSURANCE LINK, INSURANCE  
CARRIER/TPA

RESPONDENT NO. 1

COMMERCE & INDUSTRY INSURANCE CO.,  
C/O AIG CLAIM SERVICES, INSURANCE  
CARRIER/TPA

RESPONDENT NO. 2

OPINION FILED DECEMBER 9, 2005

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

Claimant represented by the HONORABLE KENNETH A. HARPER,  
Attorney at Law, Monticello, Arkansas.

Respondents No. 1 represented by the HONORABLE LEE J.  
MULDROW, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE JOHN P.  
TALBOT, Attorney at Law, Pine Bluff, Arkansas.

Decision of Administrative Law Judge: Affirmed as modified.

OPINION AND ORDER

Respondent No. 1 appeals an administrative law judge's  
opinion filed February 15, 2005. The administrative law  
judge found, among other things, that the claimant proved he

sustained a compensable injury to his left wrist. The administrative law judge found that the claimant proved he was entitled to temporary total disability for his left wrist injury "from January 25, 2002, until his healing period for this injury has ended, which is a date yet to be determined." The administrative law judge found that "Respondent carrier No. 1 bears liability, as said respondent was on the risk at the time of claimant's left, as well as right, carpal tunnel injuries."

After reviewing the entire record *de novo*, the Full Commission affirms as modified the opinion of the administrative law judge. The Full Commission finds that the claimant proved he sustained a compensable injury to his left wrist. We find that the claimant proved he was entitled to temporary total disability compensation from May 5, 2003 through July 5, 2003. We find that the claimant proved that prospective left carpal tunnel surgery was reasonably necessary in connection with his compensable injury. We find that the claimant's left wrist problems on and after April 25, 2002 constitute a recurrence, for which Respondent No. 1 is liable. The Full Commission therefore

affirms the administrative law judge's finding that Respondent No. 1 bears liability for temporary total disability compensation and reasonably necessary medical treatment.

I. HISTORY

The record indicates that William F. Warren, age 54, was hired at H&L Poultry Processing in August 2001. Mr. Warren testified, "My initial main job was wing sawer. You take the triangle, the wing, you saw it, make two cuts on it. You basically, what you do is like you grab a handful of wings that are stacked for you four or five at a time, and you can make two cuts on it, cut it one way, and then you flip it and cut another way, and you discard - sometimes you discard the little tips, which are no good....And the birds are processed very fast."

The claimant testified that he began suffering from upper extremity symptoms after three or four months. The claimant testified, "it wasn't so much the wrists at first, it was in the hands, swelling, joint swelling, I mean, the fingers, the whole hands would swell, you know, and over the

nighttime they may go down a little bit when you sleep and stuff, but aching, stiffness, tingling."

The claimant testified that he next began "working on the scale, weight scale, weighing all the different types of boxes." The claimant testified, "I think we were just doing away with that meat, we had to empty it out, so you take a piece of paper and I went to take it and throw it in the trash can and felt a pop, well, I'd say a pop or something in there."

Dr. Kenneth W. Purvis saw the claimant on January 25, 2002: "Presents with strain to his right wrist. He apparently pulled his right wrist while doing some work, making a sudden wrist turn out at the plant....I put him in a wrist splint and he had almost immediate relief of pain."

The claimant testified that Dr. Purvis provided injection treatment, and the claimant testified that he continued to work. "Seems like I was off for a while, but I had - I believe I was back working after, after a very short time."

The parties stipulated that "the January 2002 injury to the right wrist was accepted as compensable."

Dr. Purvis returned the claimant "to limited duty with his right arm" on January 28, 2002.

The claimant continued to follow up with Dr. Purvis for right wrist pain, and the claimant testified that he eventually began having problems with both wrists.

Dr. Michael M. Moore wrote to Dr. Purvis on March 6, 2002:

As you may remember, he is a pleasant, 50-year-old, right-hand dominant gentleman who was working at H&L Poultry when he sustained an injury to his right wrist. He reports that he was lifting crates when he felt a popping sensation over the dorsal and radial aspect of the right wrist. Following this incident, he noted pain in the wrist. In addition, he developed the onset of pain and numbness in both hands. Mr. Warren reports the symptoms will awaken him at night. He describes pain in the right wrist, which is worse when he performs lifting or gripping. He has been treated with splinting and an injection, which have provided him minimal relief....

It is my opinion Mr. Warren's clinical history and physical examination are consistent with a right de Quervain's syndrome and possibly bilateral carpal tunnel syndrome....

Due to the fact that Mr. Warren's symptoms have persisted, it was my opinion further evaluation and treatment were indicated....Mr. Warren has been advised to wear a right thumb spica splint continuously. He will return to the office in 1 month for follow-up evaluation. Prior to his return appointment, he has been scheduled to

undergo a triphasic bone scan of the right wrist and a nerve conduction and EMG study of both hands. Mr. Warren can continue his current work status. He should wear a splint at all times. He should not perform repetitive work on the line....

Dr. Reginald J. Rutherford provided an EMG Report on March 8, 2002:

The nerve conduction study is abnormal demonstrating median neuropathy localized to the wrist both upper extremities. Changes are moderate to severe in degree being more marked on left than right. There is no abnormality noted on study of the ulnar nerve either upper extremity or EMG either upper extremity.

In summary present study demonstrates bilateral carpal tunnel syndrome of moderate to severe degree, the left median nerve being most compromised.

The claimant testified, "I continued to work all the time."

Dr. Moore reported on April 3, 2002:

On 03/08/02 a nerve conduction and EMG study was consistent with a moderate to severe bilateral carpal tunnel syndrome. In addition, Mr. Warren's physical examination is consistent with a right de Quervain's syndrome. Mr. Warren was recently treated with an injection into the right first dorsal compartment. He reports his right wrist pain did improve following this treatment. Mr. Warren's current primary complaint relates to pain and numbness in the left hand. The symptoms will awaken him at night. He has worn splints which have provided him mild relief. I discussed

treatment options at length with Mr. Warren. It was my opinion he would benefit from left carpal tunnel surgery....He elected to proceed with the left carpal tunnel surgery. The surgery will be performed on an outpatient basis in the near future. In regards to his right hand, Mr. Warren was treated with a right carpal tunnel injection....Mr. Warren will wear a splint on the right hand for protection. Mr. Warren will resume light duty work on 04/18/02. He should not perform pushing, pulling, or lifting greater than 10 pounds using both hands. He should wear splints as needed. He should avoid work which requires gripping or repetitive activity....

Finally, Mr. Warren's hands were evaluated with a triphasic bone scan. The bone scan was unremarkable except for changes consistent with mild degenerative disease. There was no evidence of focal increased activity in either wrist or hand....

The claimant testified on cross-examination by Respondent-carrier No. 2's attorney, "they couldn't get the insurance companies to agree on the left hand. I wanted the surgery before, like I said, before on the left hand because it was the one that showed to be the most traumatically, or showed the most to have the carpal tunnel."

Dr. Moore wrote to a representative of Respondent-carrier No. 1 on April 17, 2002:

William Warren was initially seen on 03/06/02 at which time he reported that he had sustained a right wrist injury while he was working at H&L

Poultry. He experienced a popping sensation when he was lifting crates. Following this incident, he noted pain over the dorsal and radial aspect of the right wrist. Shortly after this incident, he noted the onset of numbness in the fingers of his right hand. Mr. Warren reported that during the past several weeks, he has developed similar symptoms in the left hand. He underwent a nerve conduction and EMG study, which was consistent with a moderate to severe bilateral carpal tunnel syndrome. His physical examination was consistent with a right de Quervain's syndrome. A recent bone scan revealed minimal, increased activity in multiple PIP joints. This finding was felt to be nonspecific and most consistent with mild degenerative or arthritic changes.

It is my opinion Mr. Warren most likely had a pre-existing bilateral carpal tunnel syndrome. The carpal tunnel symptoms in the right hand were likely exacerbated by the work injury that occurred on 01/25/02. In addition, the injury precipitated a de Quervain's syndrome. His clinical history and physical examination are consistent with these diagnoses. It is my opinion the left carpal tunnel syndrome and the bone scan that revealed degenerative changes in the fingers were not related to the work injury, which occurred on 01/25/02....

The parties stipulated that the "coverage date" for Respondent-carrier No. 2, Commerce & Industry Insurance Co., began April 18, 2002.

Counsel for Respondent-carrier No. 2 examined Shirlene Wiley, a licensed practical nurse employed with H&L Poultry:

Q. Did they ever recommend treatment on his left wrist?

A. Doctor Purvis just was treating his right wrist.

Q. Okay. Did Doctor Purvis refer him to anybody else?

A. He sent him to Doctor Moore.

Q. What did Doctor Moore do?

A. He did the nerve conduct studies on both hands, and then he filed a request for surgery on his left hand.

Q. Okay. And what happened with that request?

A. The insurance company denied coverage on the left hand because he had never filed a claim on it.

Q. And do you remember when that was that that occurred?

A. They sent us a notice on April 25<sup>th</sup> of 2002.

Q. Did you communicate that to Mr. Warren?

A. Yes....He came in and I give (sic) him copy of the letter.

Q. What happened after you communicated that to him?

A. He went to work, but he said he had wanted his left hand fixed because his right hand was what he did everything with, and that he wanted to see if it worked on his left before he committed to his right and then be left helpless.

Q. Did he report any injury that same day?

A. Later on that night at the end of the shift....He said that they had made him come from the back off light duty and work on line, and that he was having pain in his left wrist....

Q. Did he mention anything about his shoulder?

A. No, just his wrist and his hand.

The record contains a Form AR-N, Employee's Notice Of Injury, on which form the claimant reported an accident occurring April 25, 2002. The claimant appears to have discussed an injury to the left wrist, and the claimant signed the Form AR-N on May 1, 2002.

The claimant testified regarding an incident occurring "April 25<sup>th</sup>. I was - of 2003, I think it was....And I was put on the line pulling breasts, chicken breasts....And five minutes, maybe ten minutes into that, I couldn't, I couldn't grasp the breast, I couldn't hold it, let alone pull it, coming to me....and I pulled something in my shoulder, and all I know, my whole hand, from here." It appears the claimant was actually referring to the alleged incident occurring on April 25, 2002.

The record also contains a First Report Of Injury Or Illness, prepared May 3, 2002. The First Report indicated that the part of body affected was the claimant's left wrist, stating, "while pulling breast felt sharp pain." The Report indicated that the claimant returned to work on April 26, 2002.

Dr. Moore wrote to a representative of Respondent-carrier No. 1 on June 24, 2002, "He complains of recurrent pain over the dorsal aspect of the right wrist....Mr. Warren will continue to wear a right thumb spica splint. He will continue light duty work." Dr. Moore wrote to Respondent-carrier No. 1 on July 22, 2002:

William Warren was seen at the Arkansas Hand Center on 07/22/02 for follow-up evaluation of his right and left hands. He has a right de Quervain's syndrome and bilateral carpal tunnel syndrome. He has been treated with conservative measures, including a right wrist first dorsal compartment injection, unfortunately, he reports persistent symptoms in both hands. He describes pain and numbness in both hands and pain over the dorsal and radial aspect of the right wrist. The pain is worse when he performs lifting and gripping. A review of systems regarding the musculoskeletal system was otherwise unremarkable.

I discussed treatment options at length with Mr. Warren, which included splinting and repeat injections or a right de Quervain's release and

bilateral carpal tunnel surgery. He feels his symptoms are significant; he would like to proceed with left carpal tunnel release. I felt this was a reasonable decision....

Mr. Warren will be scheduled to undergo surgery in the near future on an outpatient basis. He will continue light duty work. He should not perform pushing, pulling, or lifting greater than 10 pounds using both hands. He should not use his hands to perform significant gripping or repetitive work activity. He understands and agrees with the treatment plan as outlined and all questions were answered.

Dr. Moore reported on October 9, 2002, "It is my opinion Mr. Warren would benefit from bilateral carpal tunnel surgery and a right de Quervain's release. At this time, he has elected to proceed with surgical treatment....The surgery will be performed on 11/02/02 on an outpatient basis."

The record indicates that Dr. Moore performed a De Quervain's release and carpal tunnel release on the right on November 21, 2002.

The claimant testified, "after I had the surgery I was off, I think it was about six weeks or eight weeks, something like that." The claimant testified that he received temporary total disability while he was off work.

Dr. Moore informed Respondent No. 1 on December 5, 2002, "He can perform light duty work. He should not perform pushing, pulling, or lifting greater than 10 pounds using both hands. He should not use his hands to perform significant gripping or repetitive work activity."

Dr. Moore stated to Respondent No. 1 on January 9, 2003, "Mr. Warren does have a left carpal tunnel syndrome. He reports intermittent pain and numbness in the left hand and arm. At this time, he does not feel his left hand symptoms warrant carpal tunnel surgery....He understands that he will reach his maximum medical improvement following the right hand surgery in 6 weeks. In addition, he will make a decision whether to return to full work activities or proceed with a left carpal tunnel release....Mr. Warren will continue light duty work. He should not perform pushing, pulling, or lifting greater than 10 pounds using his hands. He should not use his hands to perform significant gripping."

Dr. Moore informed Respondent No. 1 on March 4, 2003, "He reports the pain and numbness in his right hand have improved....Mr. Warren describes pain and intermittent

numbness in the left hand and arm....He felt his left hand symptoms were significant; he has elected to proceed with carpal tunnel release....The surgery will be performed on an outpatient basis in the near future....Due to the fact that Mr. Warren has left carpal tunnel syndrome, he will continue light duty work. He should not perform pushing, pulling, or lifting greater than 10 pounds using his hands. He should not use his hands to perform significant gripping."

Dr. Moore informed an attorney on March 25, 2003, "The right carpal tunnel syndrome and right de Quervain's syndrome could be related to the work injury which Mr. Warren reported after he was lifting crates. In addition, it is my understanding Mr. Warren's job duties required him to operate a wing saw. If this job required significant gripping, pushing, pulling, or repetitive activity, it is my opinion this type of work could aggravate or precipitate symptoms associated with bilateral carpal tunnel syndrome."

Dr. Moore wrote to a registered nurse with Concentra Managed Care, Inc. on April 8, 2003:

I received your letter dated 04/02/03. According to this letter, Mr. Warren performed repetitive motion activities with his left hand for 2 hours.

It is unlikely this limited work activity would be the primary cause of a left carpal tunnel syndrome....

The claimant testified that his last day of work for the respondent-employer was on or about May 5, 2003. "I went to work on that Monday and informed that I was being terminated," the claimant testified, "because I had missed too much time for going to the doctor, appointments with it what they basically said."

Dr. Moore wrote to a paralegal with The Harper Law Office on December 30, 2003:

William Warren was initially seen in the office on 03/06/02 at which time his clinical history and physical examination were consistent with a right de Quervain's syndrome and bilateral carpal tunnel syndrome. A nerve conduction and EMG study performed on 03/08/02 was consistent with a bilateral carpal tunnel syndrome. On 11/21/02, he was taken to surgery where he underwent a right de Quervain's release and right carpal tunnel release.

Mr. Warren has reached his maximum medical improvement. As I stated in a previous letter on 03/02/03, the impairment of Mr. Warren's right hand would be determined by a postoperative nerve conduction and EMG study....

He does have a left carpal tunnel syndrome. If the pain and numbness in his left hand become more persistent or severe, surgical treatment could be indicated.

Mr. Warren reported that he developed the onset of right hand and arm pain symptoms following an injury that occurred at work. Mr. Warren was lifting crates when he felt a popping sensation over the dorsal and radial aspect of the right wrist. Following this incident, he noted pain and numbness in the right hand and arm. Mr. Warren also describes his job as requiring him to perform repetitive gripping and lifting using both hands. He did not describe any hobbies or other activities that were stressful to his hands....

In regards to the left hand, I received information from Debbie Doyle, the case manager from Concentra. She reported that Mr. Warren had developed symptoms in his left hand while he was performing light duty work. Apparently, he was performing repetitive work only 2 hours per day. It was my opinion the limited work activity would be the primary cause of the left carpal tunnel syndrome. If Mr. Warren used his left hand to perform repetitive work, including lifting and gripping, it is my opinion this type of work activity could exacerbate or precipitate symptoms associated with carpal tunnel syndrome. The work repetitive activities would be the major cause of his symptoms....

A pre-hearing order was filed on September 27, 2004. The claimant contended that he sustained "a right wrist carpal tunnel injury in January of 2002, and now contends that he has sustained a left wrist and shoulder injury as of April or May of 2002. The claimant seeks continued medical treatment and payment of past treatment, temporary total disability benefits from the date of injury until a date yet

to be determined, medical treatment for a left wrist and shoulder injuries, and permanent partial disability benefits for his right wrist."

Respondent No. 1, The Insurance Link, contended that "claimant's current difficulties are related to an injury that occurred after The Insurance Link went off the risk, that claimant cannot establish by objective medical evidence that his current difficulties are related to the January 25, 2002 compensable right wrist injury, that claimant cannot establish that his January 2002 compensable injury represents the major cause of his current difficulties." Counsel for Respondent No. 1 indicated at hearing that, if the claimant was assigned an impairment rating for the January 2002 injury, then Respondent No. 1 would pay benefits associated with that rating.

Respondent No. 2, AIG Claim Services, contended that "any problems claimant was having in April or May of 2002, were due to previous injuries and/or degenerative problems."

The parties agreed to litigate the following issues:  
"Compensability of the left wrist and shoulder injuries and

which carrier would be responsible for claimant's left wrist and shoulder injuries."

A hearing was held on November 19, 2004. The attorney for Respondent No. 1 indicated at that time that medical treatment associated with the January 2002 (right wrist) injury was paid, and that the claimant was paid for the time he was off work for the January 2002 injury.

The claimant testified:

Q. Now, are you still having problems with your left wrist?

A. Yes.

Q. What kind of problems are you having?

A. Well, it's really my left shoulder and my left wrist, too, cause I still have swelling and tingling. Since, the left hand has never been really dealt with or treated or anything like that, and it's been right at two years and stuff and I've found I don't have the strength. I can't, I have difficulty picking up things like pieces of paper, opening bottles, like the bottles, like soda pop bottles and stuff like that....When I'm at rest my arm hurts, my shoulder hurts....

Q. And you're still having problems with your left wrist and your left shoulder?

A. Correct.

Q. And are you asking that you get medical treatment for that?

A. Correct.

Q. Okay. Now, let me ask you, since the last day that you worked out at H&L - and that was in 2003, is that correct?

A. I believe so, yes.

Q. - have you worked since then?

A. I worked for a couple of weeks during the Christmas holidays for a convenience store, like from December 21<sup>st</sup> to January 8<sup>th</sup>, 7<sup>th</sup>, something like that.

Q. Okay. Now you also received unemployment compensation, did you not?

A. Yes.

Q. Okay. And when did you receive that?

A. It started three months after, two months after I was terminated from H&L, and I, until probably for or five months ago, I think.

Q. Are you able to go back to doing the work that you were doing at H&L?

A. No.

Q. Can you function vocationally with your right or left arm?

A. I don't think so, not at this time. I don't believe I can.

The administrative law judge found, among other things, that the claimant proved he sustained a compensable injury to his left wrist. The administrative law judge found that the claimant proved he was "entitled to temporary total disability indemnity benefits in relation to his left wrist injury from January 25, 2002, until his healing period for this injury has ended, which is a date yet to be determined." The administrative law judge found that "Respondent carrier No. 1 bears liability, as said respondent was on the risk at the time of the claimant's left, as well as right, carpal tunnel injuries."

Respondent No. 1 appeals to the Full Commission.

## II. ADJUDICATION

### A. Compensability

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 claimant described hand-intensive work for the respondent-employer beginning in August 2001, and the claimant testified that he began suffering from hand symptoms bilaterally after three to four months. The claimant sought medical treatment for an accidental injury to his right hand on January 25, 2002. The evidence indicates that this injury was a right wrist sprain - it was not a gradual carpal tunnel injury, but in any event, Respondent-carrier No. 1 appears to have paid all medical treatment and temporary total disability related to the claimant's right hand. Respondent No. 1 essentially

states on appeal that it does not dispute compensability of benefits for the claimant's right hand and wrist.

Through a referral from Dr. Purvis, Dr. Moore began treating the claimant in March 2002. Dr. Moore reported "pain and numbness in both hands." Dr. Moore diagnosed possible "bilateral carpal tunnel syndrome." Dr. Rutherford subsequently performed electrodiagnostic testing. Dr. Rutherford reported "bilateral carpal tunnel syndrome of moderate to severe degree, the left median nerve being most compromised." Dr. Rutherford's findings thus demonstrate objectively-shown bilateral carpal tunnel syndrome. The Full Commission finds that the claimant sustained carpal tunnel syndrome on the left, 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 respondent-employer. We also find that the compensable injury was the major cause of the claimant's resulting disability and need for treatment.

Dr. Moore first recommended left carpal tunnel surgery on April 3, 2002. The Commission notes, however, that the claimant never underwent this surgery. Respondent No. 1 was

"on the risk" at the time of the first surgical recommendation. We also note Dr. Moore's April 17, 2002 opinion, to wit: "the left carpal tunnel syndrome and the bone scan that revealed degenerative changes in the fingers were not related to the work injury, which occurred on 01-25-02." This opinion from Dr. Moore is entitled to minimal weight in adjudicating compensability of the claimant's left carpal tunnel syndrome. The claimant's work-related symptoms involving his left upper extremity were not causally related to the right wrist sprain occurring on January 25, 2002. The claimant's right wrist sprain is not directly relevant with regard to whether or not the claimant sustained a gradual injury on the left. Further, the record does not clearly indicate which "degenerative changes" Dr. Moore was referring to. Dr. Moore ordered an x-ray on the right following the January 2002 wrist sprain; this study revealed degenerative changes on the right. However, Dr. Rutherford's EMG study clearly showed carpal tunnel on the left and the right. Dr. Rutherford did not conclude that the claimant's bilateral carpal tunnel syndrome was "degenerative," nor has Dr. Moore ever so found.

Respondent-carrier No. 2 began providing coverage on April 18, 2002. According to the testimony of the company nurse, the claimant knew by about April 25, 2002 that the company's insurance carrier was not going to pay for surgery on the left. The record does not clearly show which carrier sent out this notice. But in any event, the claimant promptly reported a work-related injury to the left hand on or about April 25, 2002. The evidence demonstrates that the claimant did have an objectively-shown, work-related carpal tunnel condition on the left. The claimant also requests benefits for an alleged left shoulder injury, but there is no evidence before the Commission to support a finding of a shoulder injury.

The Full Commission finds that the claimant sustained a compensable left carpal tunnel injury. Dr. Moore's reports on March 25, 2003 and April 8, 2003 appeared to be inconsistent, which reports essentially indicated that Dr. Moore was unsure at that time whether or not the claimant's left carpal tunnel condition was or was not work-related. But Dr. Moore stated in December 2003, "It was my opinion the limited work activity would be the primary cause of the

left carpal tunnel syndrome." Medical opinions addressing compensability must be stated within a reasonable degree of medical certainty. Ark. Code Ann. §11-9-102(16)(B). Where 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. Howell v. Scroll Tech., 343 Ark. 297, 35 S.W.3d 800 (2001). In the present matter, the Full Commission finds that Dr. Moore's December 2003 report constitutes probative evidence indicating that the claimant's left carpal tunnel condition arose out of and in the course of the claimant's employment. We therefore affirm the administrative law judge's finding, "Claimant has proven by a preponderance of the credible evidence that he sustained a compensable injury to his left wrist."

B. Temporary Disability

An employee with a scheduled injury is entitled to temporary total disability compensation during the time that he remains within his healing period and has not returned to work. Ark. Code Ann. §11-9-521(a); Wheeler Constr. Co. v. Armstrong, 73 Ark. App. 146, 41 S.W.3d 822 (2001).

The administrative law judge found in the present matter, "Claimant is entitled to temporary total disability indemnity benefits in relation to his left wrist injury from January 25, 2002, until his healing period for this injury has ended, which is a date yet to be determined." The Full Commission does not affirm this finding. We have determined *supra* that the claimant sustained a compensable carpal tunnel injury on the left. The claimant was first diagnosed with bilateral carpal tunnel syndrome in March 2002. The claimant testified, however, that he continued "to work all the time." We note that the claimant was off work for a number of weeks after undergoing surgery on the right upper extremity in November 2002. The claimant agreed that Respondent No. 1 paid an appropriate period of temporary total disability compensation related to this surgery.

The "healing period" is defined as "that period for healing of an injury resulting from an accident." Ark. Code Ann. §11-9-102(12). Whether a claimant's healing period has ended is a factual question to be resolved by the Commission. Dallas County Hosp. v. Daniels, 74 Ark. App. 177, 47 S.W.3d 283 (2001).

In the present matter, the record indicates that the claimant has remained within a healing period since the diagnosis of bilateral carpal tunnel syndrome in March 2002. The claimant continued to receive treatment for his left and right carpal tunnel condition. Dr. Moore recommended surgery on the left in April 2002, July 2002, October 2002, and March 2003. This recommended surgery by the treating physician was never carried out. The claimant's employment was terminated on or about May 5, 2003. A termination of employment does not cut off an employee's entitlement to temporary total disability compensation. King v. Tree House Developers, Workers' Compensation Commission F212615 (Feb. 27, 2004). The claimant testified that he began receiving unemployment compensation within two months after the termination of his employment. An employee is not entitled to temporary total disability while he is receiving unemployment compensation. Allen Canning Co. v. Woodruff, CA 04-1364 (Ark. App. 9-7-2005).

The Full Commission finds that the instant claimant proved he was entitled to temporary total disability compensation beginning May 5, 2003, the date of the

claimant's termination of employment with the respondents, until July 5, 2003, the approximate date the claimant began receiving unemployment compensation.

C. Recurrence/Aggravation & Apportionment

Finally, a recurrence is not a new injury but merely another period of incapacitation resulting from a previous injury. Atkins Nursing Home v. Gray, 54 Ark. App. 125, 923 S.W.2d 897 (1996). A recurrence exists when the second complication is a natural and probable consequence of a prior injury. Weldon v. Pierce Bros. Constr., 54 Ark. App. 344, 925 S.W.2d 179 (1996). An aggravation is a new injury resulting from an independent incident. Farmland Ins. Co. v. Dubois, 54 Ark. App. 141, 923 S.W.2d 883 (1996). When the second complication is found to be a natural and probable result of the first injury, the employer initially liable remains liable; only where it is found that the second episode has resulted from an independent intervening cause is that liability affected. Bearden Lumber Co. v. Bond, 7 Ark. App. 65, 644 S.W.2d 321 (1983). The test of whether a causal relationship exists between the first episode of injury and the second is a question of fact for

the Commission. Carter v. Flintrol, Inc., 19 Ark. App. 317, 720 S.W.2d 337 (1986).

The administrative law judge found in the present matter, "Respondent carrier No. 1 bears liability, as said respondent was on the risk at the time of claimant's left, as well as right, carpal tunnel injuries." The Full Commission affirms this finding. Respondent No. 1 argues on appeal that the claimant "sustained either a new injury or a compensable aggravation on April 25, 2002, primarily involving his left wrist, arm and shoulder." Respondent No. 1 asserts that the claimant's "new symptoms" to his left upper extremity on and after April 25, 2002 constitute "a classic new injury or compensable aggravation." Respondent No. 1 alternately contends that liability should be apportioned between the two carriers. Respondent No. 1 cites Blasingame v. Multistaff Leasing, Workers' Compensation Commission F008967, F009694, F105066 (Jan. 14, 2003).

The Full Commission recognizes that we apportioned liability between two carriers in Blasingame, *supra*. In that case, however, the claimant had sustained a compensable

injury while one carrier was on coverage and another compensable injury while a separate carrier was on coverage. The Full Commission determined that the claimant had experienced a permanent increase in symptoms as a result of the second compensable event. "Thus," the Full Commission found, "apportionment of future benefits between Respondent No. 1 and Respondent No. 2 is appropriate."

In the present matter, the record does not show that the claimant sustained a new compensable injury, that is to say, an "aggravation," to his left upper extremity on April 25, 2002 and following. An aggravation, being a new injury with an independent cause, must meet the definition of a compensable injury in order to establish compensability for the aggravation. Dubois, *supra*. The aggravation of a preexisting condition and an independent intervening cause are one and the same. Bond, *supra*. In the present matter, the Full Commission recognizes that Respondent No. 2 was "on the risk" at the time of the claimant's reported injury to the left hand on April 25, 2002 and following. Nevertheless, the record shows no new objective findings on that date and afterward establishing a compensable injury or

aggravation. Without a showing of a compensable aggravation, we are unable to apportion responsibility for benefits between the two carriers. The Full Commission therefore affirms the administrative law judge's finding that Respondent No. 1 bears liability for the claimant's worker's compensation benefits.

Based on our *de novo* review of the entire record, the Full Commission affirms as modified the opinion of the administrative law judge. The Full Commission finds that the claimant proved he sustained a compensable injury to his left wrist. We find that the claimant proved he was entitled to temporary total disability compensation from May 5, 2003 through July 5, 2003. The claimant proved that carpal tunnel surgery, as recommended by Dr. Moore, was reasonably necessary in connection with the claimant's compensable injury on the left. We find that the claimant's symptoms on April 25, 2002 and following constituted a recurrence, and that Respondent No. 1 is liable for temporary total disability compensation and reasonably necessary medical treatment. The claimant's attorney is entitled to fees for legal services pursuant to Ark. Code

Ann. §11-9-715(a) (Repl. 2002). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (2) (Repl. 2002).

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.

CONCURRING AND DISSENTING OPINION

I must respectfully dissent from the majority opinion finding the claimant sustained a compensable left wrist injury. The majority finds that the claimant has proven by a preponderance of the evidence that he sustained a compensable injury to his left wrist in the form of a recurrence, for which respondent No. 1 is solely liable. Yet, the majority fails to distinguish whether this "recurrence" is a gradual onset or a specific incident

injury. Because the claimant has failed to make a claim for a gradual onset left carpal tunnel injury, no compensable recurrence of such an injury can follow. On the other hand, the claimant has clearly failed to prove the elements of a specific incident left carpal tunnel injury, which is what he claims to have suffered. Therefore, benefits cannot be awarded for a recurrence of a gradual onset injury which the claimant has failed to prove is compensable.

The claimant was conclusively diagnosed with bilateral carpal tunnel syndrome by March 8, 2002, pursuant to an NCV/EMG study by Dr. Reginald Rutherford. This diagnostic study came after the claimant claimed a specific incident to his right wrist in January of that same year. The claimant's right wrist injury was accepted by respondent No. 1 and all associated benefits were appropriately paid. Although fully aware of his left carpal tunnel condition no later than March of 2002, the claimant failed to make a claim or to seek benefits for his left wrist until April 25, 2002, at which time he specifically reported that while pulling apart a chicken breast, he experienced a "burning in my left arm and wrist that caused my whole arm to hurt... ."

The claimant never asserted nor filed a claim for a gradual onset injury to his left wrist, claiming only a specific incident had occurred that caused him injury to his left wrist, hand, and shoulder. For reasons thoroughly discussed by the majority, the claimant has failed to prove that he sustained an injury to his left shoulder on April 25, 2002. Therefore, the decision of the majority to deny compensability of the claimant's alleged left shoulder injury is correct, and in this regard, I would concur with the majority finding.

In order to prove a specific incident or accidental injury, Ark. Code Ann. §11-9-102(4)(A)(i) (Repl. 2002) requires that the claimant prove by a preponderance of the evidence that the injury was caused by a specific incident, identifiable by time and place of occurrence, which arose out of and in the course of employment, which resulted in internal or external physical harm to the body, and which required medical services or resulted in disability or death. See also, Wal-Mart Stores, Inc. v. Westbrook, 77 Ark. App. 167, 72 S.W.3d 889 (2002). In reference to carpal tunnel injuries, Ark. Code Ann. §11-9-

102(4) (A) (ii) provides that carpal tunnel syndrome is specifically categorized as a compensable injury falling within the definition of a compensable injury. However, Ark. Code Ann. §11-9-102(4) (A) (ii) specifically deals with *gradual onset injuries*, whereas accidental, or specific incident injuries are covered in §11-9-102(4) (A) (i). The Commission is strictly prohibited from broadening the scope of the workers' compensation laws under the provisions of Ark. code Ann. §11-9-1001. Specifically, this section of the statute states:

In the future, if such things as the statute of limitations, the standard of review by the workers' compensation commission or the courts, the extent which any physical condition, injury, or disease should be excluded from or added to coverage by the law, or the scope of the workers' compensation statutes need to be liberalized, broadened, or narrowed, those things shall be

addressed by the general assembly and should not be done by the Administrative Law Judges, the workers' compensation commission, or the courts.

Further, the Commission is required under the provisions of Ark. Code Ann. §11-9-704(c) (3) to strictly construe the statute. In Lawhon Farm Services v. Brown, 335 Ark. 272, 984 S.W.2d 1 (1998), the Supreme Court stated:

Strict construction means narrow construction. In Arkansas Conference Seventh Day Adventists v. Benton City Board of Equalization, 304 Ark. 95, 800 S.W.2d 426 (1990), and Thomas v. State, 315 Ark. 79, 864 S.W.2d 835 (1993), we wrote that strict construction requires that nothing be taken as intended that is not clearly expressed. The doctrine of strict construction is to use the plain meaning of the language employed.

Holaday v. Fraker, 323 Ark. 552, 915 S.W.2d 280 (1996). Even when statutes are to be strictly construed, however, they must be construed in their entirety, harmonizing each subsection where possible. MenArk Pallett Co. V. Lindsey, 558 Ark. App. 309, 950 S.W.2d 468 (1997).

The Commission is certainly not a court of equity, and applying the above, although we must "harmonize each subsection [of the statute] where possible", we cannot go beyond the statutory boundaries set forth before us by the general assembly. In the present claim, the majority does not specifically state that it finds the claimant's left carpal tunnel syndrome to be a gradual onset injury, but it strongly indicates that this is the case by quoting the provisions set forth in §11-9-102(4)(A)(ii) as its basis for a finding of compensability. As previously mentioned, the claimant has failed to make a claim for a gradual onset carpal tunnel injury to his left wrist. Therefore, it is an

error to make a finding based upon this subsection of our statute. Moreover, because there can be no finding of compensability of an injury that was not claimed by the claimant, it logically follows that there can be no finding of a compensable recurrence of such an injury.

The claimant claimed that he sustained an accidental injury to his left wrist on April 25, 2002, while he was pulling apart a chicken breast at work. While the majority acknowledges that the claimant's left carpal tunnel is not causally related to his right wrist injury of January 2002, and that he promptly reported a work-related injury to his left hand on or about April 25, 2002, the majority states, "The evidence demonstrates that the claimant did have an objectively-shown, work-related carpal tunnel condition on the left." Therefore, concluded the majority, the claimant's symptoms on April 25, 2002 and following constituted a compensable recurrence of his preexisting carpal tunnel syndrome. If this is in fact the case, and a recurrence being "another period of incapacitation resulting from a previous injury", Atkins Nursing Home v. Gray, 54 Ark. App. 125, 923 S.W.2d 897 (1996), then it goes without

saying that the compensability of the claimant's condition should have first been established before a compensable recurrence could be found. Certainly under the present set of facts and circumstances, it would seem to place an undue burden on respondent No. 1 to be held liable for the compensable consequences of a recurrence of an injury for which compensability was never established. Equally, it would seem to be beyond the scope of our jurisdiction to make a claim on the claimant's behalf which he failed to make below in order, perhaps, to soft-shoe an award of benefits for what has the appearance of being a legitimate work-related injury. In failing to make a claim for a gradual onset injury, the claimant has likewise failed to prove the elements necessary to establish the compensability of such an injury.

In Bennett v. City of Benton, Full Commission Opinion filed August 14, 1996 (Claim No. E500506), we stated:

The proposition that a party bringing a claim must establish every element

required to establish such a claim in order to prevail is an elementary concept of law. Certainly, proof of the facts necessary to establish certain elements can be provided by the stipulations of the parties, and, where evidence related to an element is unrebutted, the element may be established with only minimal evidence. However, the party opposing the claim is not required to specifically challenge every element of a claim in order to bring the element into issue. Instead, by challenging the claim, the opposing party brings every element of the claim into issue and imposes a burden of establishing each element of the claim on the party bringing the claim.

We concluded that the above is an "elementary tenet of the law," such that a claimant cannot claim surprise by its application.

Clearly, the claimant was fully aware of his left carpal tunnel condition prior to his alleged accidental injury of April 25, 2002. Therefore, he cannot prove the elements necessary to establish a left carpal tunnel injury pursuant to Ark. Code Ann. §11-9-102(4)(A)(i). Additionally, the claimant has failed to make a claim for injury to his left wrist pursuant to Ark. Code Ann. §11-9-102(4)(A)(ii). Because the claimant has failed to prove that he sustained a specific incident injury in the form of left carpal tunnel syndrome, and because he has failed to make a claim for a gradual onset carpal tunnel syndrome injury, surely he cannot now be awarded benefits for a recurrence of either of those alleged type injuries. Therefore, I must respectfully dissent from the majority finding that the claimant has proved by a preponderance of the evidence that he sustained a compensable recurrence of his left carpal tunnel syndrome. Moreover, I must respectfully dissent from finding that the claimant has proven by a preponderance of the evidence that

he is entitled to temporary total disability benefits specifically related to his left carpal tunnel syndrome.

Therefore, I respectfully dissent from the majority opinion.

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KAREN H. MCKINNEY, Commissioner