

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F404887

CHERYL LOUDERMILK, EMPLOYEE	CLAIMANT
WAL-MART ASSOCIATES, A SELF INSURED EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, TPA	RESPONDENT

OPINION FILED APRIL 19, 2006

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

Claimant represented by HONORABLE EVELYN BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondent represented by HONORABLE DALE BROWN and HONORABLE CURTIS NEBBEN, Attorneys at Law, Fayetteville, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed June 9, 2005.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. On all relevant dates, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. On all relevant dates, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$313.00 for total disability and \$235.00 for permanent partial disability.
4. The claimant has failed to prove by the greater weight of the credible evidence that she sustained "compensable injuries" to her wrists/hands, as term is defined by Ark. Code Ann. §11-9-102(4)(A)(ii)(a). Specifically, she has failed to prove by the greater weight of the credible evidence the existence of a causal relationship between her employment related activities for this respondent, over time, and her bilateral wrist/hand difficulties.
5. The respondents have denied the occurrence of any compensable injuries to the claimant's wrists/hands and have controverted this claim in its entirety.

The claimant alleges that he sustained a compensable injury that is governed by the Arkansas Workers' Compensation Act, A.C.A. § 11-9-101 et seq. The claimant's alleged injury is, indeed, an injury that is covered by the Act; however, the claimant has failed to establish the

elements necessary to prove a compensable injury by a preponderance of the evidence.

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.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____I must respectfully dissent from the Majority's opinion affirming and adopting the Administrative Law Judge's June 6, 2005 opinion. Based upon my de novo review of the record, it is my opinion that the Administrative Law Judge's decision should be reversed.

_____The claimant has alleged that she developed bilateral carpal tunnel syndrome as a result of her nine-year employment with the respondent employer. According to the claimant, during the years she was employed by the respondent employer, she performed a variety of hand-intensive duties. She stated that she began suffering symptoms of pain, tingling, and numbness in her right wrist beginning in 2001. However, she stated that she continued working with the problem and did not notify her immediate supervisor until September 2003.

The claimant continued working for the respondent employer until January 2004. However, she continued to have problems with her hand and was eventually referred to the respondent employer's company physician, Dr. Gary Moffitt,

of Arkansas Occupational Health in Lowell, Arkansas. Dr. Moffitt, based upon the claimant's complaints, eventually had her undergo a nerve conduction study for her hand. The test was performed on May 27, 2004. The test documented the presence of right carpal tunnel syndrome. However, in spite of the fact that the claimant was engaged in hand-intensive employment with the respondent employer, Dr. Moffitt stated in a report dated June 9, 2004 that he believed the major cause of the claimant's problem was rheumatoid arthritis and not carpal tunnel syndrome. The respondent employer, based upon Dr. Moffitt's opinion, eventually controverted the claim in its entirety.

The claimant testified that she was employed by the respondent employer for almost ten years. During that time, her jobs were hand-intensive, generally requiring the use of both hands to perform data entries, keyboarding, or similar activities. Her work history with the respondent employer reflects continuous promotions to more responsible jobs which, nonetheless, required intensive use of her hands and arms.

In reviewing the medical narrative, I note that there is no dispute among the claimant's doctors that the claimant has developed right carpal tunnel syndrome. This condition has been verified in clinical examinations and documented by the results of a nerve conduction velocity test. Further, in my opinion the claimant's testimony regarding her job duties clearly demonstrates that she was engaging in the type of repetitive, stressful activities which are commonly the cause of carpal tunnel syndrome. In particular, she was required to repetitively type data entries using a numeric keyboard which requires frequent and repetitive use of her hand, oftentimes with her wrist in an awkward position. Since these activities are also temporally related to her development of carpal tunnel syndrome, it is my opinion that her job related activities were the major cause of her developing this condition.

To rebut this finding, the respondent asserts that the claimant developed her carpal tunnel syndrome because of non-job related activities such as crocheting or that she developed this because of arthritis, a non-job related

condition. I do not believe that either of these contentions have any merit.

The claimant testified that she stopped crocheting in 1999. This was two years prior to the first onset of her symptoms of carpal tunnel syndrome. It does not appear that, if the claimant had developed carpal tunnel syndrome from crocheting, the symptoms would not have appeared until two years after she had stopped this activity. It seems likely to me that had the claimant developed carpal tunnel syndrome while she was still crocheting, she would have reported a problem at that time. Further, even if the claimant was not being truthful about the first onset of her symptoms, it seems unlikely to me that she would have been able to continue performing her hand-intensive job duties without seeking medical treatment or reporting her symptoms to her employer.

The respondent's argument regarding the claimant's arthritic condition is based upon a statement from Dr. Moffitt that rheumatoid arthritis was a known complicated factor or possible cause of carpal tunnel syndrome. However, Dr. Moffitt is not Board certified in

rheumatology or orthopedics, and did not seem to consider the possibility of the claimant's condition being caused by her employment. Significantly, there is no medical evidence to support a conclusion that, even if the claimant is suffering from rheumatoid arthritis, that this condition is in any way related to her carpal tunnel syndrome. To contend that this arthritic condition is the cause of the claimant's carpal tunnel syndrome is nothing more than speculation and conjecture.

After my review of the medical record and the testimony of the claimant, it is my opinion that the claimant has more than met her burden of establishing that her carpal tunnel syndrome was the result of a stressful, hand-intensive job. For that reason, I would reverse the Administrative Law Judge's decision and find that she has established that she sustained carpal tunnel syndrome as a result of her job-related activities.

SHELBY W. TURNER, Commissioner