

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F504401

LORI A. STUTZMAN,
EMPLOYEE

CLAIMANT

BAXTER HEALTHCARE CORPORATION,
EMPLOYER

RESPONDENT

OLD REPUBLIC INSURANCE CO.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JULY 11, 2006

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

Claimant represented by the HONORABLE FREDERICK S. "RICK"
SPENCER, Attorney at Law, Mountain Home, Arkansas.

Respondents represented by the HONORABLE TOM HARPER, JR.,
Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed in part and
reversed in part.

OPINION AND ORDER

The respondent appeals from an administrative law
judge's opinion, which was filed on February 16, 2006. The
administrative law judge found, "That the claimant's
constitutional challenges are without merit. He further
found that the claimant has proven by a preponderance of the

evidence that she sustained compensable bilateral carpal tunnel injuries while in the respondent's employ."

After reviewing the entire record *de novo*, the Full Commission affirms in part, and reverses in part, the opinion of the administrative law judge. The Full Commission finds that the constitutional issues raised by the claimant are without merit. However, we further find that the claimant has failed to prove by a preponderance of the evidence that she sustained compensable bilateral carpal tunnel injuries while in the respondent's employ.

I. History

The claimant, age 47 (5/7/59), began working for the respondent employer on November 11, 1994.

A review of the medical evidence shows that the claimant was seen on August 2, 2002, by Dr. Richard Burnett due to severe depression, chronic obstructive pulmonary disease (COPD), and tobacco abuse.

On April 29, 2004, the claimant was seen by Dr. Thomas Knox for evaluation pursuant to referral from Dr. Burnett. At that time, the claimant reported to Dr. Knox that she began working at Baxter Healthcare two to three years ago

and after working there for a while she began developing some paresthesias in her hand which have increased. Dr. Knox noted that the claimant had undergone "a baseline set of nerve conduction studies eight years ago and that there had definitely been a significant tend to worsening."

Specifically, Dr. Knox wrote:

Examination: Pinwheel is positive bilateral. Allen test is normal bilateral. Phalen is positive bilateral. Tinel is negative bilateral. No triggering. Finkelstein maneuver is negative. Wrist motion is normal.

X-rays: X-rays of either hand show a mild degree of trapeziometacarpal arthrosis of either thumb. The wrist joints looks fine.

Assessment: Carpal tunnel syndrome, quite significant as evidenced by her nerve conduction studies which basically show a twice normal palmer latency on the right.

Recommendation: I would recommend a right open carpal tunnel release followed by the left two to three weeks later.

On July 27, 2004, Dr. Rick Walker diagnosed the claimant as having bilateral carpal tunnel syndrome. Dr. Walker noted that the claimant reported that she began having symptoms of numbness and tingling in both hands in approximately 1996 and that she had been on the job since

November of 1994. He further noted that the claimant had been moved to a different job apparently at less hand intensive-type labor and had seen some improvement. However, he noted she had started working weekends and 12-hour shifts, at which point she noticed that the symptoms had become worse. Although Dr. Walker stated that this was work-related, he noted that he was uncertain as to the date of injury. He recommended that the claimant return to work with the following restrictions, "that she wear wrist splints bilaterally, and that she not engage in forceful or repetitive gripping, and that she not lift more than 10 pounds with either hand. In addition, Dr. Walker recommended that the claimant consider median nerve decompression since non-operative measures had not provided any significant relief.

After being provided with additional information concerning the claimant's hobbies and other work as a nursing assistant, on October 1, 2004, Dr. Walker reported, in pertinent part, the following:

After having re-reviewed her medical chart and having also perused orthopedic literature regarding epidemiology, my opinion is, with a

reasonable degree of medical certainty, that the assembly line work at Baxter Healthcare does not contribute greater than 50% to the causation of her carpal tunnel syndrome symptoms.

As I am sure you are well aware of, carpal tunnel syndrome as viewed as carpal tunnel syndrome epidemiologist's views multifactorial with epidemiology studies indicating that age-related factors, female gender, smoking and body mass index as well as cross-sectional area of the carpal tunnel all contributing primarily to carpal tunnel syndrome symptoms. Many studies are now viewing work as being only periphery related to the causative factor of carpal tunnel syndrome.

On August 19, 2005, Dr. J.K. Smelz reported in pertinent part:

Discussion:

The question of etiology is difficult in the case of carpal tunnel syndrome, however, Ms. Stutzman has multiple factors which are known to increase her risk, including increased body mass index, increased wrist ratio bilaterally, right more than left, female gender, post menopausal status, age over 41 years, hand arthritis, and smoking. (It is unknown whether she has been checked for other predisposing factors, such as glucose intolerance, or thyroid imbalance).

She described her work at Baxter as involving repetitive activity as she demonstrated today, involved fine motor coordination and grasping, not significant and/or prolonged torquing with extreme flexion and extension of the wrist.

Given her multiple inherent risk factors, and reviewing her work history, I do not feel with a greater than 50% certainty, that the previous type

of work she described performing would have caused or exacerbated a carpal tunnel syndrome.

It should also be noted that at this time, under the testing as described in the accompanying report, Ms. Stutzman has electrodiagnostic findings which could be described at most as consistent with only very minimal distal median neuropathy, and not approaching at all the severity at which carpal tunnel release would even be considered, in my opinion.

A hearing was held before the Commission on November 23, 2005. At the hearing, Jeff Rowbothen, gave testimony. Mr. Rowbothen has been a personal banker at Bank of America since January 11, 2005. According to the claimant, he had previously worked at Baxter Healthcare for approximately 27 years. According to Mr. Rowbothen, prior to his last position at Baxter, he worked as production supervisor in Dialyzer, and during that time, the claimant worked as a production person for him on various shifts. Mr. Rowbothen testified that he left his employment with Baxter in June of 2004, and that the claimant had worked for him off and on during the two and a half years prior to his departure from the company. According to Mr. Rowbothen there were production quotas on everything. He testified that the respondent makes several different medical products,

including plastic sheeting for bags and tubing. According to Mr. Rowbothen, in the Dialyzer department, they made kidney dialysis filters and peritoneal dialysis and kits, as various departments produced various products. Upon being questioned about the claimant's job activities, Mr. Rowbothen testified that all of the jobs were very rapid over either an eight-hour or 12-hour shift.

On cross examination, Mr. Rowbothen testified that the claimant's job duties involved grasping.

The claimant also gave testimony during the hearing. The claimant testified she worked for the respondent approximately ten years assembling products. According to the claimant, when she first began working for the respondent, she was placed in Cell Separator on the second shift, making phoresis kits, as they dealt with both small and large tubing, putting kits together. The claimant testified that this is when she first started experiencing problems with her hands, but she continued to work. The claimant testified:

Q. Tell us what you were doing when that happened? What was your job? What types of motions of the hands did you have to use?

A. I was on the line and it was on a big circle and we'd all make different things. And it dealt with putting tubing into other tubings. Very small tubing, putting ends on them, and so many stations on the line. And then, when it got further into the line, we would put the tubing together. We dipped it in cyclo, put it in another tubing, and then we would put it into a plastic case. And then it would go to the next station and so forth.

The claimant further testified that they had production quotas and that her job was rapid, repetitive and continuous. At which time, the claimant was working eight-hour shifts, five days a week. According to the claimant, she worked in the Cell Separator department for five years, and then it was shut down. Next, the claimant was placed in the Dialyzer department, which entailed manual work. The claimant testified:

Q. Okay. Tell the Judge about that job, when you say it was all manual.

A. It was set up, you know, you'd get up from one station and move to the next. One station would insert the fiber, pull the sheeting out, and then it would go to another station. You would manually hand-screw the caps on. They were red and clear caps; we would screw them on. Then it went to another station. They had to put tips in them. You'd put the tips in them. You'd put the tip in them, you'd have to hit them like that.

The claimant further testified that at the next station, it would go to a manual hand-weld wherein they would put it into a thing and hit the sides. The claimant specifically testified:

It would push forward, weld the cap headers on, and then come back. You'd take it and it would go up a belt, then it would go up to another station. Got inspected, put into a bag, and went through a thing to be sealed and then out to the packing area.

The claimant essentially testified that she performed other jobs that were rapid, repetitive, and continuous. According to the claimant, she had more difficulty with her hands on some jobs than she did on others. The claimant testified she experienced symptoms of tingling, swelling, and numbness in her hands, and her wrists would hurt. The claimant testified she sought treatment from the company nurse on several occasions about this, but she was uncertain as to what period of time she was going to the nurse's station. According to the claimant, the nurse would treat her with hot compresses. During this time, the claimant admitted to having worked in a nursing home as a certified nursing assistant to support herself and her three teen-aged children. The claimant admitted to lying to the respondent

about not being gainfully employed anywhere else. However, the claimant denied that any of her work in the nursing home was rapid, repetitive or continuous. The claimant admitted that she is claiming that her problems with carpal tunnel resulted due to her having worked for the respondent. The claimant maintains that she discussed her hand problems with Teresa Coggins, the respondent's head nurse. She also admitted to having dealt with a lady/nurse named Bonnie.

On cross-examination, the claimant admitted that while drawing short-term disability benefits from the respondent, she was employed by Care Manor. The claimant further admitted she was certifying through Baxter's insurance that she was totally disabled from employment. The claimant admitted that the activity she performed on her computer playing games bothered her hands, as well as her hobby of crocheting. Specifically, the claimant admitted that the employee health record was correct wherein she told the nurse, Susan Butler on April 29, 2004, her hands get pretty numb while on her home computer playing games or surfing the net. The claimant testified:

Q. How long have you been playing computer games?

A. Well, I don't always play computer games.

Q. Well when did you start?

A. I've had my computer, probably, five, six years.

Q. You didn't play computer games before five or six years ago?

A. I probably did, but that's not all I do when I sit in front of my computer.

Q. How long have you been crocheting?

A. I've tried it here and there.

Q. For how long?

A. Well, when I try to crochet, my hand goes numb, so I have to put it down.

Q. Well, when did you first start?

A. Years ago. Probably before I even ever knew the the lab existed.

The claimant admitted to telling Dr. Burnett in October of 1985, her right hand goes numb. The claimant also admitted to being on medical leave from the respondent and drawing short-term disability due to viral and bronchial problems, as she is a heavy smoker. As of the date of the hearing, the claimant was unemployed. According to the claimant, she quit her employment with a nursing home due to

conflict with a nurse. The claimant admitted that she was discharged from Care Manor in May of 2005 due to drugs being present in her system. The claimant admitted that although she may have given earlier testimony that she began having problems with her hands about a year and a half after she started working for the respondent, if medical records show that she had worked there barely six months when her hand problems started, this is probably correct.

The claimant testified she last worked for respondent in November of 2004. According to the claimant, around the time she left her employment with the respondent, she was working in the cassette molding department. The claimant testified she had to pull the cassettes off the machine, inspect them and put them in totes, as they had to be stacked.

The parties stipulated that the claimant's 17-year-old daughter's testimony would corroborate her testimony as to the problems and difficulties she has experienced with her hands swelling, redness and things of the sort.

Steve Hall, the Director of Human Resources for the respondent, gave testimony during the hearing. He admitted

that the reason given for the claimant's leaving the company on the separation form indicates that she left due to personal reasons. Mr. Hall admitted to being familiar with the circumstances that led to the execution of the separation form. According to Mr. Hall, he had discussions with the claimant about her request for leave, and requested additional documentation from her physician concerning her working while on leave during the period of time she was requesting a leave of absence from Baxter. Mr. Hall testified that since the claimant was unable to provide him with this documentation in ample time, she was given the opportunity to voluntarily resign, or, if not, they would pursue it. Although Mr. Hall was uncertain as to whether the claimant actually drew any short-term disability benefits as a result of her applications, he recalled her alleged illness being an upper respiratory infection.

A prehearing conference was held in this matter on August 23, 2005, and as a result, a Prehearing Order was filed in the matter on August 23, 2005. The parties stipulated to the following:

1. The employee-employer-carrier relationship existed in April of 2004 and at all other relevant times.

2. Claimant's average weekly wage was \$470.18; her temporary total disability rate is \$313.00; and her permanent partial disability rate is \$235.00

By agreement of the parties, the issues to be presented at the hearing were limited to the following:

1. Whether claimant sustained a compensable bilateral carpal tunnel syndrome injury as reported on April 16, 2004.

2. Whether claimant is entitled to medical benefits.

3. Whether the respondent is entitled to an offset under Ark. Code Ann. §11-9-411.

4. Whether the claimant is entitled to temporary total disability benefits.

5. Whether the claimant's attorney is entitled to an attorney's fee.

At the hearing, the parties stipulated to reserve all of the aforementioned issues except for the issue of compensability.

The claimant contended that she sustained compensable gradual onset bilateral carpal tunnel injuries during the course of her employment with the respondent.

In contrast, the respondent contended that the claimant did not sustain compensable bilateral carpal tunnel within the course and scope of her employment with respondent.

After a hearing before the Commission, the administrative law judge found, "That the claimant's constitutional challenges are without merit. He further found that the claimant has proven by a preponderance of the evidence that she sustained compensable bilateral carpal tunnel injuries while in the respondent's employ."

The respondent appeals to the Full Commission.

II. Adjudication

A. Constitutional Issues

In sum, the claimant contends that the entire Workers' Compensation Law as set forth at Ark. Code Ann. §11-9-101, et. seq., is unconstitutional.

The administrative law judge found that, "Based on the factual and legal conclusions of the Full Commission in Leslie E. Bland v. Baxter Regional Medical Center, Full Workers' Compensation Commission, Opinion filed August 16, 2005 (F204378), copy of which is blue backed as Commission Exhibit 2. I find that the claimant's constitutional

challenges are without merit." The Full Commission affirms this finding. Specifically, we find that the claimant has not demonstrated that Act 796 of 1993 is unconstitutional. Hence, we have already refuted all of these alleged constitutional violations raised by the claimant's attorney in Long v. Wal-Mart Stores, Inc., Full Workers' Compensation Commission, Opinion filed Jan. 25, 2006 (F309931), Plummer v. Wal-Mart Stores, Inc., Full Workers' Compensation Commission, Opinion filed Oct. 10, 2005 (F209057), Edwards v. Galloway Sand & Gravel, Full Workers' Compensation Commission, Opinion filed Oct. 11, 2005 (F109737), and Bland v. Baxter Regional Medical Center, Full Workers' Compensation Commission, Opinion filed Aug. 16, 2005 (F204378).

B. Compensability

The claimant also contends that she sustained compensable gradual onset bilateral carpal tunnel injuries during the course of her employment with the respondent. As such, the claimant is not required under the provisions of Act 796 of 1993 to establish that her work duties required rapid repetitive motion in order to establish the

compensability of her bilateral carpal tunnel syndrome injuries. Kildow v. Baldwin Piano & Organ, 333 Ark. 335, 969 S.W.2d 190 (1998). However, the claimant must still prove that she sustained bilateral carpal tunnel syndrome injuries arising out of and in the course of her employment, that a work-related injury is the major cause of her disability or need for medical treatment, and the compensable injuries must be established by objective medical findings.

Specifically, the administrative law judge found, "The claimant has proven by a preponderance of the evidence that she sustained compensable bilateral carpal tunnel injuries while in the respondent's employ." The Full Commission disagrees with this finding. We do not find that the claimant proved by a preponderance of the evidence that her bilateral carpal syndrome injuries are causally connected to her job activity. In our opinion, the claimant is not a credible witness. In the present matter, the claimant's history concerning the numbness and tingling in her hands is completely inconsistent. She gave a medical history and initially testified that she began having problems with her

hands about a year and a half into her employment with the respondent. However, on cross-examination, the claimant admitted that if company records indicate that she began complaining of hand numbness and related symptoms about six months into her employment with the respondent, this is probably correct. Dr. Walker and Dr. Smelz have both opined that the claimant's job activity with the respondent was not the cause of her hand problems. There is also other evidence to suggest that the claimant's bilateral carpal tunnel syndrome may have resulted from some other source, such as playing computer games, surfing the net, and long-term crocheting, as she has admitted to experiencing hand numbness and related symptoms with her hands during these activities. In addition to this, Dr. Walker and Dr. Smelz have also cited several intrinsic patient factors, which are known to increase the claimant's risk for bilateral carpal tunnel syndrome, which include, her tobacco abuse, hand arthritis, body mass index, post menopausal status, and other age-related factors. Based on the expert opinions of Dr. Walker and Dr. Smelz, and in light of all of the foregoing, we find that it would require speculation and

conjecture to causally link the claimant's bilateral carpal tunnel syndrome to her work activity. Conjecture and speculation cannot be permitted to supply the place of proof. Dena Constr. Co v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979). As a result, the claimant has failed to prove by a preponderance of the evidence that she sustained compensable bilateral carpal tunnel injuries while in the respondent's employ. Accordingly, the Full Commission reverses the administrative law judge's finding on this issue.

Accordingly, for those reasons set forth herein, the decision of the Administrative Law Judge is hereby affirmed in part, and reversed in part. As a result, this claim is denied and dismissed in its entirety.

_____IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner concurs and dissents without opinion.

CONCURRING AND DISSENTING OPINION

_____I respectfully concur, in part, and dissent without opinion, in part from the Majority's opinion. I concur with the Majority that the constitutional issues raised by the claimant are without merit. I respectfully dissent without opinion from the Majority's finding that the claimant has failed to prove by a preponderance of the evidence that she sustained compensable bilateral carpal tunnel injuries while in the respondent's employ.

SHELBY W. TURNER, Commissioner