

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F307543

BRENDA YOUNG,
EMPLOYEE

CLAIMANT

CONAGRA POULTRY COMPANY,
EMPLOYER

RESPONDENT

GALLAGHER BASSETT SERVICES, INC.,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED MAY 3, 2006

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

Claimant represented by the HONORABLE GREGORY R. GILES,
Attorney at Law, Texarkana, Arkansas.

Respondents represented by the HONORABLE NORWOOD
PHILLIPS, Attorney at Law, El Dorado, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the
Administrative Law Judge filed October 26, 2005. In
said order, the Administrative Law Judge made the
following findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation
Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties
are reasonable and are hereby accepted as
fact.
3. The claimant has proven by a preponderance
of the evidence that she sustained a
compensable gradual onset neck injury as the

result of her rapid, repetitive work with the respondents which culminated in her disability beginning February 19, 2003.

4. The healing period for the claimant's gradual onset neck injury ended on May 23, 2003. The respondents are responsible for temporary total disability benefits for the period February 19, 2003 through May 23, 2003, at the stipulated rate.

5. The respondents are responsible for all medical treatment related to the claimant's compensable gradual onset neck injury, as well as future pain management now recommended by her treating physician.

6. The claimant has failed to prove by a preponderance of the evidence that she sustained compensable carpal tunnel injuries.

7. All issues related to possible permanent impairment are reserved.

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 made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

We therefore affirm the October 26, 2005 decision of the Administrative Law Judge, including all findings of fact and conclusions of law therein, and adopt the

opinion as the decision of the Full Commission on appeal.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner McKinney concurs in part and dissents in part.

DISSENTING OPINION

I must respectfully concur in part with, and dissent in part from the majority's opinion. My carefully conducted de novo review of this claim in its entirety reveals that the claimant has failed to prove by a preponderance of the evidence that she sustained a gradual onset, or for that fact, any type of injury to her cervical spine in the course and scope of her employment with the respondent employer. Therefore, I find that the decision of the Administrative Law Judge with regard to this finding should be reversed and benefits denied. However, I find that the Administrative Law Judge was correct in finding that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable carpal tunnel syndrome injury, in that the preponderance of the evidence fails to demonstrate objective medical findings to support a carpal tunnel injury.

The claimant commenced her employment with the respondent employer in June of 2002, first as a "watcher" then as a "stacker" in the food production process department. The claimant and her former co-worker, Ms. Angela Dorsey, described her duties in these

positions in detail by deposition and during the hearing of this matter on August 2, 2005. In January of 2003, the claimant testified that she began losing strength in her left hand, and experiencing pain in her neck. The claimant testified that she reported these symptoms to a supervisor, who instructed her to see the plant nurse. The plant nurse had the claimant complete the appropriate paperwork, and scheduled her for a doctor's appointment. In the meantime, the claimant was given ice packs and a heating pad for her neck pain.

On February 19, 2003, the claimant was examined by Dr. Greg Smart. According to the claimant's testimony and Dr. Smart's medical record of that initial visit, Dr. Smart was concerned that the claimant may have suffered a stroke. Dr. Smart took the claimant off of work and referred her to her personal physician for further neurological evaluation.

On February 26, 2005, the claimant was seen by Dr. Shailesh Vora. From this examination, Dr. Vora recommended an MRI of the claimant's cervical spine and a nerve conduction study of her arms. In addition, Dr. Vora took the claimant off of work until April 1, 2003. In the meantime, on February 28, 2003, the claimant

requested medical leave of absence from work through March 31, 2003.

As interpreted by Dr. Vora, the results of the claimant's MRI, which was conducted on March 4, 2003, showed a right herniation with impingement of the neural foramina at C5-6. Further, the NCV/EMG study showed denervation in the muscles supplied by the right C7, C8 nerve root, which was, according to Dr. Vora, indicative of C7, C8 nerve root partial compression. In addition, this study allegedly showed carpal tunnel syndrome in the claimant's right wrist, for which Dr. Vora recommended a release.

Pursuant to these diagnostic studies, Dr. Vora continued the claimant on a conservative course of treatment, which included physical therapy, heat, exercise, and lifting restrictions. In addition, Dr. Vora continued the claimant off work. As of the claimant's follow-up appointment with Dr. Vora on April 28, 2003, he referred her for a neurosurgical consultation with Dr. P.B. Simpson. In his report of that examination, Dr. Simpson stated:

She [the claimant] saw Dr. Vora, and he has done numerous studies on her, including nerve conduction, EMGs, and a MRI, which he read.

The MRI report shows that she has a disc protrusion at C5-6, but this is on the right side and all her symptomatology is on the left

side. She describes pain in her neck, pain towards her left arm, and some numbness over her little finger at times on the left side. She has never had anything like this before.

Referring next to his own assessment of the claimant's condition, Dr. Simpson continued:

The MRI of her cervical area that was done by Dr. Vora on 3/4/03 in my estimation shows no evidence of any disk impingement on the cervical cord along the cervical nerve rootlets, especially that on the left side. I do not see any abnormality whatsoever.

(Emphasis added) ... I am unable to reproduce any radiculopathy or find any focal neurological deficit, and there is nothing on the MRI. In my estimation, I do not find any evidence of a herniated disk on the studies presented to me. I told her that if she was incapacitated, we would consider doing a myelogram and a post-myelogram CT, but if this was negative, then I think her work up here will have been completed.

Dr. Simpson's estimation of the claimant's NCV/EMG study was that the claimant's right side latency testing showed minimal elevation, with the left being completely normal. Likewise, the claimant's right first dorsal interossei and triceps extensor carpi radialis longus showed some abnormality on the EMG study, with the left being normal. Concluding that the claimant may be suffering from cervical radiculopathy, Dr. Simpson ordered a cervical myelogram and post-myelogram CT. These studies, which were conducted on May 9, 2003, and

read by Dr. Simpson, showed no significant findings. In his report of these studies, Dr. Simpson stated:

She has a lot of giveaway-type weakness, and there is certainly not enough seen on the myelogram or post-myelogram CT to warrant surgical intervention. The radiologist points to a small non-filling of the root far laterally at C5-6. I am not sure that is significant, and she has very equivocal findings on the myelogram at that level. With her symptomatology, it just does not warrant surgical intervention.

Dr. Simpson referred the claimant back to the care of her primary physician, and he kept her off of work for two weeks, after which time he released her to return to regular duties.

The claimant returned to Dr. Vora, who continued her on a conservative course of treatment, including cervical epidural steroid injections. In addition, Dr. Vora kept the claimant off work. In mid-August of 2003, Dr. Vora referred the claimant for a second neurological evaluation; this time with Dr. Eric Akin. In the meantime, Dr. Vora completed a physician's workers' compensation questionnaire, in which he answered affirmatively to having observed muscle spasms in the claimant's neck.

The claimant was evaluated by Dr. Akin on August 20, 2003. Based upon incomplete records of the

claimant's MRI and his physical examination of her, Dr. Akin opined that the claimant suffered from axial neck pain. In his report, Dr. Akin stated:

An MRI of the cervical spine shows moderate stenosis at the C7-T1 level. There are no cord signal changes. The alignment of the spine appears normal.

...

She apparently has a myelogram available which I would like to see before making any surgical decisions. It appears that she has primarily axial neck pain, although she does have a possible component of a radiculopathy in the left C8 distribution. This could be explained by the stenosis seen at the C7-T1 on her myelogram, but further delineation of this region would be necessary.

Dr. Akin referred the claimant for pain management treatment, and withheld his final opinion concerning a surgical option pending his review of the complete set of diagnostic studies. In the meantime, the claimant proceeded under the conservative care of Dr. Vora, who continued to keep her off work.

The claimant underwent a functional capacity evaluation which was conducted by Doin Dahlke on February 25, 2004. The results of this study were reportedly unreliable due to the claimant's inconsistent effort and inappropriate illness responses. Although the evaluator noted that the claimant did not demonstrate

the ability to lift more than 21 pounds bimanually, 25 pounds with her right hand, or 10 pounds with her left, he stated that the claimant's true functional limitations "remain unknown" due to her unreliable effort.

On September 7, 2004, the claimant underwent an independent medical evaluation with neurosurgeon, Dr. Warren Long, at the respondent's request. Dr. Long provided a lengthy report of this evaluation, in which he mapped out the claimant's past medical treatment associated with her alleged injury. Dr. Long acknowledged that he had not received complete records of the claimant's past diagnostic studies, but based on the records he had available to him and his physical examination and observations of the claimant, he agreed with prior opinions that the claimant was not a surgical candidate. In fact, Dr. Long set forth the opinion that claimant did not have cervical involvement. More specifically, Dr. Long stated, "This lady does not have a cervical disc". Dr. Long then added, "The most she has in her neck is a cervical strain." In his detailed report of that evaluation, Dr. Long further stated:

I do not agree with Dr. Vora that she has reached Maximum Medical Improvement as far as her carpal tunnel, but she has as far as her

neck. I do not feel she has any permanent damage from her neck at all.

Upon explaining that he could not evaluate her carpal tunnel because he did not have the results of her NCV/EMG study, Dr. Long continued his assessment of the claimant's neck condition as follows:

The pain in her neck does not reproduce any numbness on hyper-extension or turning to the left, so I do not think she has any significant disc problems or radicular pain in her neck.

Again, when I reviewed the March 4th MRI of her neck, not all sagittals were there and I did not see the myelogram. In my wildest imagination, I do not feel she has C7-T1 disc. She does not have any ulnar nerve split, nor does she have any numbness or hypalgesia over the distribution of the dermatone at 8-1.

Further, with regard to the claimant's neck, Dr. Long concluded...

What I can tell you is her neck is self limiting once she gets her carpal tunnel release. I do not think pain management will help this lady.

After her evaluation by Dr. Long, the claimant continued under the care of Dr. Vora. Notwithstanding the opinions of Dr. Simpson, Dr. Akin, and Dr. Long concerning the claimant's condition, Dr. Vora persisted in his diagnosis of right C5-6 disc herniation with

nerve impingement, for which he continued to treat her conservatively and keep her off work.

On November 11, 2004, the claimant was evaluated by orthopedic surgeon, Dr. Kenneth Gati, who assessed her with musculoskeletal pain of the cervical spine and carpal tunnel syndrome. Dr. Gati recommended another NCV/EMG study, which was performed on December 13, 2004. Although this repeat study showed no evidence of upper extremity carpal tunnel syndrome, Dr. Gati recommended a right release based upon his "clinical" findings. Further, based upon the results of a repeat cervical MRI conducted on January 4, 2005, Dr. Gati diagnosed the claimant with degenerative disc disease with bulges at C5-C8, for which he recommended epidural injections, but no surgery. The last medical contained within the record is the claimant's visit with Dr. Vora on February 7, 2005, at which time he continued her on a conservative course of treatment and off work.

The Commission has the authority to resolve conflicting evidence and this extends to medical testimony. Foxx v. American Transp., 54 Ark. App. 115, 924 S.W.2d 814 (1996). The Commission is entitled to review the basis for a doctor's opinion in deciding the weight of the opinion. Reeder v. Rheem Mfg. Co., 38 Ark.

App. 248, 832 S.W.2d 505 (1992). There is no requirement that medical testimony be expressly or solely based on objective findings, only that the record contain supporting objective findings. Swift-Eckrich, Inc. v. Brock, 63 Ark. App. 118, 975 S.W.2d 857 (1998). Further, a medical opinion based solely upon claimant's history and own subjective belief that a medical condition is related to a compensable injury is not a substitute for credible evidence. Brewer v. Paragould Housing Authority, Full Commission Opinion filed Jan. 22, 1996 (Claim No. E417617). The Commission is not bound by a doctor's opinion which is based largely on facts related to him by claimant where there is no sufficient independent knowledge upon which to corroborate the claimant's claim. Roberts v. Leo-Levi Hospital, 8 Ark. App. 184, 649 S.W.2d 402 (1983).

Historically, when weighing medical evidence, we often give deference to a claimant's treating physician with regard to a medical opinion of the claimant's condition and/or the cause of that condition. However, for the following reasons, more weight in this claim should be assigned to the opinions of the claimant's consulting physicians than to her treating physician, Dr. Vora. First, from the alleged onset of

the claimant's injury in January of 2003, through her ensuing two year course of treatment under his direction, Dr. Vora appeared to be unable to make a definitive diagnosis of the claimant's condition. This is evidenced by the several referrals he made for evaluations to other physicians of essentially the same area of specialty. For example, in Spring of 2003, Dr. Vora referred the claimant to Dr. Simpson, a neurosurgeon, who found no evidence of cervical disc herniation or carpal tunnel, particularly on the left. In August of 2003, Dr. Akin, also a neurosurgeon, examined the claimant and saw stenosis in her cervical spine. However, Dr. Akin did not report medical findings which would establish an injury to the claimant's cervical spine. Then in November of 2004, the claimant was evaluated by orthopedic surgeon, Dr. Kenneth Gati, who ultimately opined that the claimant suffered from degenerative disc disease in her cervical spine. In addition, a repeat NCV/EMG study conducted at that time showed no evidence of upper extremity carpal tunnel syndrome. Finally, at the request of the respondent, the claimant was evaluated by yet another neurosurgeon, namely Dr. Long, in September of 2004. As previously mentioned, Dr. Long did not in his "wildest imagination"

feel that the claimant had a permanent condition with regard to her C7-T1 disc.

In addition to the lack of objective medical findings and/or medical opinions to substantiate an injury to the claimant's cervical spine, Dr. Vora's course of treatment for the claimant's condition has failed to relieve her symptoms. This further indicates that either Dr. Vora's diagnosis was inaccurate, or that perhaps the claimant has engaged in symptom magnification. This latter assumption is not merely speculative, in that Mr. Dahlke indicated that the claimant displayed inappropriate illness responses during her functional capacity evaluation and that she had given an unreliable effort. Moreover, it is intriguing that Dr. Vora apparently did not deem it necessary or appropriate to follow up on Dr. Smart's suspicion that the claimant may have suffered a stroke, rather than a cervical injury, especially in view of the lack of objective findings to substantiate a left sided injury and the failure of Dr. Vora's treatment plan to alleviate her symptoms.

In reviewing the objective medical evidence, it is evident that none of the claimant's examining physicians were able to ascertain the precise nature of

the claimant's cervical dysfunction. The claimant's various diagnoses literally range from neck strain to herniated disc. One thing that is clear, however, is that only Dr. Vora has opined that the claimant suffers from a right sided herniated cervical disc which is affecting her left side. As previously mentioned, however, when asked for specific objective medical evidence to support this conclusion, Dr. Vora offered a vague explanation as to how a right sided herniation could be causing the claimant's left sided symptoms. Based upon the above, I place more weight on the opinions of the 3 neurosurgeons (Simpson, Akin, and Long) and one orthopedic surgeon (Gati) than that of a single neurologist (Vora). This especially in light of the neurologist's lengthy treatment of the claimant's alleged condition having failed to bring her any relief.

In terms of the issue of the claimant's work being rapid and repetitive, there is sufficient evidence to show that the nature of the claimant's employment activities as a stacker could reasonably constitute rapid repetitive work under our workers' compensation statute. However, I find that the claimant has failed to prove by objective medical evidence that she has sustained an injury to her neck and/or carpal tunnel

syndrome as a result of that activity. At the most, as Dr. Long opined, the claimant may have strained her neck at some point due to her work activities. However, this was never conclusively established by objective medical findings. On the other hand, that the claimant has degenerative disc disease in her cervical has been established by objective medical evidence. Moreover, the claimant's prior work activities could have easily caused the type of symptoms that she now claims was the result of her work activities with the respondent employer. Therefore, even assuming arguendo that the claimant has sustained an injury to her neck or wrists, she has failed to establish a causal connection between these conditions and her employment with the respondent employer. Therefore, the claimant's claim for compensability fails on two fronts: (1) the claimant has failed to establish a compensable injury by medical evidence supported by objective findings, and (2) the claimant has failed to prove by a preponderance of the evidence that the injury was the major cause of her disability or need for treatment. In strictly applying the controlling law under Act 796 of 1993 to the evidence in this case, the claimant has failed to meet her burden of proof as to the compensability of her neck

and/or carpal tunnel injuries. Therefore, the compensability of the claimant's neck injury should be denied and the Administrative Law Judge's decision reversed. Finally, because the claimant has failed to establish by objective medical evidence that she has sustained carpal tunnel injuries, I concur with this finding.

Therefore, for all the reasons set forth herein, I must respectfully concur in part with and dissent in part from the majority opinion.

KAREN H. MCKINNEY, Commissioner