

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F507898

MARILYN E. CANADY,
EMPLOYEE

CLAIMANT

ST. VINCENT HEALTH SERVICE,
EMPLOYER

RESPONDENT

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA/ALTERNATIVE
INSURANCE MANAGEMENT SERVICES,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED JUNE 14, 2007

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

Claimant appears pro se.

Respondents represented by the HONORABLE WILLIAM C.
FRYE, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the
Administrative Law Judge filed August 28, 2006. In said
order, the Administrative Law Judge made the following
findings of fact and conclusions of law:

1. The stipulations agreed upon by the parties are reasonable and are approved.
2. The employee-employer-carrier relationship existed on July 28, 2005 and at all other relevant times.
3. Respondents controvert this claim.

4. Claimant did not sustain her burden of proving by a preponderance of the evidence that she sustained a compensable carpal tunnel syndrome injury. Dr. Carle's opinion, as supported by the medical records, establishes that there is not a causal connection between Claimant's employment and her injury; rather, her condition is related to her weight and age.

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.

The claimant alleges that she 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.

Therefore we affirm and adopt the August 28, 2006 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 Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority opinion finding that the claimant did not sustain a compensable injury in the form of carpal tunnel syndrome. I find that the claimant performed a job which required various hand intensive duties which ultimately led to her developing carpal tunnel. I further find that the Majority errs in relying on the opinions set forth by Dr. Carle rather than the opinion expressed by Dr. Roberts.

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 by 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).

The claimant testified that she worked as an LPN until 1990 and that she then became an RN charge nurse. The claimant said that in either 1992 or 1996 she became a Supervisor. The claimant went into great detail about what duties she was required to perform in each of these positions. While there were differences in the duties of the jobs, the claimant's testimony establishes that each job required her to perform various hand-intensive jobs including constant writing, putting together medical equipment or giving medication or injections, and typing. These are exactly the type of activities that are traditionally associated with the onset of carpal tunnel syndrome. Additionally, the

claimant said that her symptoms worsened in 2004 after completing a two day computer class which further indicates that job-related, hand intensive activities aggravated and worsened her condition. Likewise, I note that when the claimant initially presented for treatment on July 15, 2005, she apparently told the physician she had to perform keyboarding at work, thereby showing the claimant's condition was related to her work.

Additionally, I note that when the claimant presented for treatment she complained of a lack of mobility and tenderness of her left hand. The claimant's EMG also showed that the claimant had bilateral ulnar nerve entrapment, which would be consistent with an injury due to rapid and repetitive work consistent with that performed by the claimant at work.

I also reject the opinions set forth by Dr. Carle in his IME report. It appears that Dr. Carle essentially identified various risk factors and then, based on that information alone, decided what caused the claimant's condition. Dr. Carle's report seems to indicate that because there are higher risk factors associated with age and weight than with rapid and repetitive activities, he concluded that she could not

have developed carpal tunnel syndrome from her job. I find that this is an oversimplified approach in determining causation. Furthermore, I reject his assertions that age or weight are the determinative factors in the progression of the claimant's symptoms. Certainly while one can be predisposed to having a medical condition, being at risk does not necessitate that they will be afflicted with that condition nor does it mean that some other event or activity could not be the major cause for a medical condition to occur. Furthermore, such an approach fails to consider important factors such as when the onset of symptoms occurred.

Furthermore, it is apparent that Dr. Carle was basing his opinion on wrong information. Dr. Carle's report indicates that the claimant did not have a risk factor associated with her job and that, "There is no routine use of vibratory tools and/or highly repetitive use of either hand or palmar instruments." Certainly one does not have to be using a vibratory tool to get an injury from rapid and repetitive activities. Furthermore, as the claimant testified that she performed hand intensive job duties throughout the course of most of her work, I find that Dr. Carle errs

in concluding the claimant was not at risk for developing carpal tunnel syndrome due to her job. Furthermore, I find that it is odd that Dr. Carle did not seem to acknowledge that the claimant's onset of symptoms was related to taking a computer course which caused what would, almost certainly, involve rapid and repetitive activity. Additionally, I note that Dr. Carle was hired by the respondents solely for the purpose of conducting an independent medical examination rather than treating the claimant.

Finally, I found the opinion of Dr. Roberts to be more convincing than that of Dr. Carle. On January 9, 2006, Dr. Thomas Roberts opined that the claimant's symptoms could be related to her job and that, "I told her that nobody could ever completely know how much this is related to our work, but I do think there is probably some component of it that is." As noted by the Administrative Law Judge, the term probably has been held sufficient to show causation exists. See, Wackenhut Corp. v. Jones, 73 Ark. App. 158, 40 S.W.3d 333 (2001).

In sum, when reviewing the report of Dr. Roberts, I believe his approach towards determining causation was more balanced and logical than that of Dr.

Carle. Furthermore, given the claimant's description of her job duties in conjunction with the onset of symptoms and the other evidence in the case, I find that the claimant has met her burden of proof in establishing a compensable claim.

For the aforementioned reasons, I must respectfully dissent.

PHILIP A. HOOD, Commissioner