NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F412221

BARBARA FARMER,
EMPLOYEE — CLAIMANT

WAL-MART STORES, INC.,
EMPLOYER — RESPONDENT

CLAIMS MANAGEMENT, INC.,
INSURANCE CARRIER — RESPONDENT

OPINION FILED AUGUST 13, 2007

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

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

Respondents represented by the HONORABLE CURTIS L. NEBBEN, Attorney at Law, Fayetteville, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals an opinion and order of the Administrative Law Judge filed October 26, 2006. In said order, the Administrative Law Judge made the following findings of fact and conclusions of law:

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on August 2, 2006, and contained in a pre-hearing

order filed August 3, 2006, are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that her DeQuervain’s tendinitis is causally related to her compensable right wrist injury of November 10, 2004.

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 October 26, 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.

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OLAN W. REEVES, Chairman

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KAREN H. McKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority opinion, which finds the claimant is not entitled to medical treatment for DeQuervain’s syndrome. On October 26, 2006, an Administrative Law Judge issued an opinion finding that the claimant did not sustain an injury in the form of DeQuervain’s syndrome. The sole reason for the Administrative Law Judge’s denial of benefits was because the opinion of Dr. Heinzelmann, who asserted the claimant’s wrist fracture could have caused DeQuervain’s, was not stated within a reasonable degree of medical certainty. The Majority now affirms and adopts this decision as their own.

After a de novo review of the record, I find the Majority commits reversible error by ignoring the corroborative evidence showing a causal connection

between the claimant's wrist fracture and subsequent DeQuervain's syndrome. It is apparent that the Majority's sole reason for denying the claimant's claim is because they conclude that Dr. Heinzelmann's opinion was not given within a reasonable degree of medical certainty. However, it is well settled that a doctor's opinion is not required in order to establish a causal connection. Furthermore, given the evidence in the record, I find that the claimant has clearly met her burden of proof in showing that her DeQuervain's and need for treatment are directly related to her admittedly compensable wrist fracture. Therefore, I must respectfully dissent.

The claimant sustained an admittedly compensable injury to her wrist on November 10, 2004. The claimant worked in the bakery department and sustained a wrist fracture when she slipped and fell. When the claimant initially presented to the emergency room she was diagnosed with a sprained wrist. However, the following day, she went to another emergency room and was diagnosed with a right distal radius fracture. The claimant wore a cast for six weeks. She testified that even after the cast was removed, she continued to

suffer from pain and tingling. The symptoms radiated into her thumb.

The claimant's cast was removed on December 21, 2004. The claimant's x-rays from that date indicated the claimant's fracture had healed, but that she had osteopenia from disuse. On the same day, the claimant began physical therapy. The physical therapist's notes indicate that the claimant still suffered from pain at a level of 8 out of 10 and that her wrist felt the same as it did the day it was broken. The claimant was noted to have edema to the ulnar aspect of the right wrist. The claimant continued with physical therapy and continued to complain of pain.

On December 30, 2004, the claimant was noted to feel better overall but to still suffer from soreness in her wrist. The claimant also reported that she had, "occasional sharp pain from wrist to hand. . .". She also complained of a dull ache. The claimant was noted to have ongoing decreased range of motion and strength. Likewise, on January 4, 2005, the claimant complained of pain and pressure on her hand with quick movements.

On January 12, 2006, the claimant was treated by Dr. Heinzelmann in order to receive a rating on her wrist. The claimant reported pain from the time of her

fracture, and indicated the pain was located primarily on the radial side of her wrist. The claimant was noted to have full passive range of motion in her fingers, thumb, and wrist. The physician noted,

> She has definite area of point tenderness over the radial styloid on the radial side of the wrist and has a definitely positive Finkelstein’s test indicating de Quervain’s tendinitis of the wrist. Her grip strength today was measured at 25 pounds in her dominant right hand and gripping on this side was painful to her. Her grip was 73 pounds in her left hand.
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> IMPRESSION: 1.Well-healed fracture of the distal right radius with no evidence of bone or joint abnormalities at this time. 2. De Quervain’s tendinitis of the right wrist which by history has been present since the time of the fracture and has caused a significant amount of pain and discomfort for her with the use of her hand.

Based on these findings, Dr. Heinzelmann recommended the claimant have a cortizone shot in the first extensor tendon compartment of her right wrist, followed by use of a forearm based thumb spica wrist splint. Dr. Heinzelmann indicated he would wait for authorization from “workers’ comp” before proceeding.

On February 7, 2006, Dr. Heinzelmann issued the claimant an impairment rating and noted the claimant

suffered from a 50% loss of strength in her right hand, as measured by a Jamar dynamometer. On May 30, 2006, Dr. Heinzelmann, apparently in response to a letter from the respondents' counsel, drafted a letter regarding causation. He indicated,

> In answer to your question of whether the loss of grip strength of her right hand was due to the fracture of her distal radius or to the de Quervain's tendinitis of her right wrist, I feel that her grip strength loss was due to the pain and discomfort she was having with the de Quervain's tendinitis of her right wrist.

On July 5, 2006, Dr. Heinzelmann drafted another letter in which he indicated,

> You asked if I felt that the de Quervain's tendinitis of her right wrist was related to her right wrist fracture of November 2004. The patient stated to me that her de Quervain's tendinitis symptoms began shortly after she sustained a fracture and I feel that the tendinitis could have been caused by the fracture.

At the time of the hearing the claimant testified that she had bilateral carpal tunnel syndrome some eight years before her admittedly compensable wrist fracture. However, she had no other wrist problems and her wrist symptoms subsided completely after surgery. The claimant further described that since the time of

her wrist fracture, her wrist symptoms have not resolved. The claimant also testified that she has not received the recommended treatment from Dr. Heinzelmann because the respondents would not pay for it. She also described that she had to quit her job with the respondents because she was working more slowly due to pain, had been reprimanded, and felt she was going to be discharged.

The Majority's sole reason for denying the claimant's request for medical treatment is because the last opinion given by Dr. Heinzelmann was not given within a reasonable degree of medical certainty. However, I find that this is not a valid reason for denying the claimant's request for additional medical benefits. A medical opinion is not required to show causation. Furthermore, in this instance, the only plausible explanation for the claimant's DeQuervain's is because of the claimant's fall and resultant fracture. Finally, while Dr. Heinzelmann's final note was not given within a reasonable degree of medical certainty, it is apparent that he felt the claimant's need for treatment was directly related to her fracture. Accordingly, when considering the facts of the case, in

conjunction with the opinion of Dr. Heinzelmann and the medical records, it is apparent the Majority has erred.

When the primary injury is shown to have arisen out of and in the course of the employment, the employer is responsible for any natural consequence that flows from that injury. Jeter v. B.R. McGinty Mech., 62 Ark.App. 53, 968 S.W.2d 645 (1998). The basic test is whether there is a causal connection between the two episodes. Bearden Lumber Co. v. Bond, 7 Ark.App. 65, 644 S.W.2d 321 (1983). It is the Commission's duty to determine if a causal connection exists between the primary injury and any additional injuries. Williams v. Prostaff Temporaries, 336 Ark. 510, 988 S.W.2d 1 (1999).

It has long been recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury upon a showing that the injury manifested itself within a reasonable period of time following the incident, is logically attributable to the incident, and there is not other reasonable explanation for the injury. Hall v. Pittman Construction Co., 235 Ark. 104, 357 S.W.2d 263 (1962).

If the claimant's disability arises soon after the accident and is logically attributable to it, with

nothing to suggest any other explanation for the employee's condition, we may say without hesitation that there is no substantial evidence to sustain the Commission's refusal to make an award. Clark v. Ottenheimer, 229 Ark. 383, 314 S.W.2d 497 (1958); Johnson v. Little Rock School District, Full Commission Opinion filed April 4, 2002 (E700511 & F011921). But, if the disability does not manifest itself until many months after the accident, so that reasonable men might disagree about the existence of a causal connection between the accident and the disability, the issue becomes one of fact upon which the Commission's conclusion is controlling. Kivett v. Redmond Co., 234 Ark. 855, 355 S.W.2d 172 (1962).

While objective medical evidence is necessary to show a compensable injury, it is not necessary to establish a causal connection. Wal-Wart Stores, Inc., v. VanWagner, 337 Ark. 443, 990 S.W. 2d 522 (1999). Furthermore, the Court of Appeals has indicated, "medical opinions need not be expressed in terms of reasonable medical certainty in speaking of a causal connection when there is supplemental evidence supporting the causal connection." Osmose Wood Preserving Jones, 40 Ark. App. 190, 843 S.W. 2d 872

(1992), citing Hope Brick Works v. Welch, 33 Ark. App. 103, 802 S.W. 2d 476 (1991); See also, Heptinstall v. Asplundh Tree Expert Co., 84 Ark. App. 215, 137 S.W. 3d 421 (2003).

In this instance, the Majority's sole reason for finding that the claimant's DeQuervain's was not related to her fall at work was because Dr. Heinzelmann's last opinion only indicated he believed the claimant's fracture "could have" caused her DeQuervain's. However, such a simplified approach ignores all the other corroborative evidence in the record which supports a finding of compensability.

It is particularly important to note that there is absolutely no dispute as to the claimant's veracity in this case. This is significant because the claimant testified that she did not suffer the symptoms from DeQuervain's until after she fell at work. Likewise, the claimant testified that she suffered immediate symptoms after the fall and that they had not resolved. Since the claimant was essentially on one-armed duty after the fall and there is no evidence to explain what else would have caused her to have DeQuervain's, it is evident that the fall caused her condition and need for treatment.

Additionally, I note that the claimant testified that while she had suffered from carpal tunnel syndrome some eight years before her injury, she had never suffered from any other problems with her right hand or wrist. Indeed, there was no evidence to rebut this claim.

It is also significant to note that after the fall, the claimant had ongoing wrist complaints that did not resolve. From the time of the fall onward, the claimant presented with pain in her hand and wrist. She also continued to have swelling, tingling, loss of strength and a loss of range of motion even after her x-rays showed her fracture had healed. In fact, when Dr. Heinzelmann treated the claimant on January 12, 2006, he indicated she had suffered a fracture to the wrist, but that she was at MMI for that injury. Notably, at that time he related the claimant's symptoms to DeQuervain's and noted the onset of symptoms began with her injury at work.

When considering the opinion given by Dr. Heinzelmann, I find that it is evident that even if he did not give an opinion within a reasonable degree of medical certainty, it is still apparent that he believed the claimant's DeQuervain's and need for treatment to be

related to her fall at work. As previously noted, on January 12, 2006, Dr. Heinzelmann noted the claimant's onset of symptoms began after falling. Additionally, on the same date, he indicated that he would await approval from "worker's comp" before treating the claimant for DeQuervain's. In my opinion, if Dr. Heinzelmann did not believe the claimant's condition to be related to her fall at work, he would not have diverted the claim to worker's compensation for payment.

Additionally, on May 30, 2006, Dr. Heinzelmann indicated that the claimant's loss of strength was related to her fracture and resultant De Quervain's. Finally, on July 5, 2006, Dr. Heinzelmann indicated again that the claimant's condition could have been caused by the fracture. Though on these occasions, Dr. Heinzelmann did not give an opinion within a reasonable degree of medical certainty, it is apparent that he believed the claimant's condition was caused by her fall and fracture at work. In fact, there is simply no other explanation from Dr. Heinzelmann as to what might have caused the claimant to have DeQuervain's.

In short, I find that the claimant has met her burden of proof in this case. There is no assertion that the claimant had a pre-existing condition or that

she provided testimony that was untruthful. The medical records also provide no evidence to that effect. Instead, the claimant’s testimony and virtually every medical report in the record contains evidence that after the fall the claimant had symptoms directly related to her DeQuervain’s. Furthermore, even though not stated within a reasonable degree of medical certainty, Dr. Heinzelmann also attributed the claimant’s DeQuervain’s and need for treatment to her fall and fractured wrist. In such an instance, to find the claimant did not meet her burden of proof is to arbitrarily disregard medical evidence to the contrary. In short, I find that when the claimant has provided testimony showing causation, and the medical evidence corroborate that testimony, it is simply error of law to deny the claim because Dr. Heinzelmann did not use the “magic words” of “within a reasonable degree of medical certainty”.

Accordingly, I must respectfully dissent.

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PHILIP A. HOOD, Commissioner