

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F408694

CLEO MARTIN, EMPLOYEE	CLAIMANT
TYSON POULTRY, INC., EMPLOYER	RESPONDENT
TYNET CORP., CARRIER	RESPONDENT

OPINION FILED MAY 7, 2007

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

Claimant represented by HONORABLE MIKE HAMBY, Attorney at Law, Greenwood, Arkansas.

Respondent represented by HONORABLE MELISSA LEE, Attorney at Law, Springdale, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed July 27, 2006

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 May 10, 2004, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to both arms on May 10, 2004.

4. The claimant is entitled to a weekly compensation rate of \$291.00 for temporary total disability and \$218.00 for permanent partial disability.

5. Medical expenses have been paid.

6. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment since March 15, 2005.

7. The claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability from October 26, 2005, to a date to be determined.

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 Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority opinion finding that the claimant is not entitled to additional medical benefits or to temporary total disability benefits. Prior to the hearing before an Administrative Law Judge, the parties stipulated that the claimant sustained compensable repetitive motion injuries to both of her wrists. The stipulation does not specify the nature of the injuries, but the claimant's doctors diagnosed her with

bilateral carpal tunnel syndrome and right-handed DeQuervain's tenosynovitis and right trigger thumb syndrome. For her left carpal tunnel injury, the claimant only received conservative treatment. However, on her right hand, she underwent surgical releases for carpal tunnel syndrome and DeQuervain's tenosynovitis and a trigger thumb repair.

The respondent paid for the medical treatment the claimant incurred at their direction between May 10, 2004, the date designated as the claimant's date of injury, through March 15, 2005. Included in that period was the DeQuervain's release performed by Dr. James Kelley, a plastic surgeon who also treats hand injuries. The respondent did not provide the claimant any temporary disability benefits since she did not miss any work because of her injuries through December 19, 2004, the date she was terminated because of a safety violation, unrelated to her compensable injury (the safety violation in question was a failure to follow proper lockout/tag out procedures). The respondent contends that all medical treatment the claimant received after March 15, 2005, was not reasonable or

necessary or related to her admittedly compensable injury, and that any disability she sustained after that date was likewise unrelated.

The claimant contends that Dr. Kelley's treatment did not result in a resolution of her compensable conditions and, because of the respondent's controversion of further medical treatment, she was forced to seek treatment on her own. Eventually, she came under the treatment of Dr. Jeffery Evans, a Fort Smith orthopedist, who performed a carpal tunnel release and a trigger thumb repair on her right hand. The claimant asserts that the respondent is liable not only for the medical treatment she received subsequent to March 15, 2005, but for additional periods of disability arising after she came under Dr. Evans' care.

After a hearing, an Administrative Law Judge found that the claimant had failed to establish that her compensable injury had caused any period of temporary disability or that the medical treatment she received from any doctors other than Dr. Kelley was reasonable or necessary. The Majority now affirms and adopts the decision

of the Administrative Law Judge as their own. However, for the reasons set out below, I would have reversed the decision of the Administrative Law Judge.

After reporting her injury to the respondent, the claimant was referred to Dr. James Kelley for treatment. She first saw Dr. Kelley in June 2004. In a letter to the respondent's plant nurse dated June 21, 2004, Dr. Kelley outlined the claimant's condition as well as his recommendation for treatment. According to Dr. Kelley's letter, the claimant was complaining of her wrist locking in a flexed position. Dr. Kelley stated that he could duplicate the locking during his examination and he diagnosed her as suffering from DeQuervain's syndrome. He also outlined her complaints of pain and numbness in both of her hands and stated that she had "strongly positive" results on a phalens, tinels and compression tests in both wrists. On that basis, he determined that she had bilateral carpal tunnel syndrome and directed that she undergo a nerve conduction velocity (NCV) study of her wrists. However, despite the positive clinical tests for carpal tunnel

syndrome, the NCV study was characterized as normal and did not demonstrate the existence of any radiculopathy or nerve entrapment.

Eventually, Dr. Kelley performed a DeQuervain's release on the claimant's right wrist. However, he would not perform a carpal tunnel release in light of the NCV studies.

Dr. Kelley placed the claimant on restrictive duty on or about August 17, 2004. She remained on that status at least through September 20, 2004, when he released her to regular duty. However, because of continuing complaints of pain, numbness, and poor function of her right hand, she continued to see Dr. Kelley. Dr. Kelley had her undergo follow-up NCV studies which were also negative. Eventually, he came to the diagnosis as outlined in a report of March 2, 2005, where he stated that he no longer believed that she had carpal tunnel syndrome. He did however reiterate his position that she had job-related DeQuervain's tenosynovitis. In a report dated March 14, 2005, he opined that she did not have any impairment rating as a result of her DeQuervain's surgery. According to his report of that

date, this position was based primarily upon his conclusion that she had a "sub-optimal" performance on her grip and pinch test.

The claimant testified that she continued to have problems with her wrist and thumb after she had been terminated by the respondent and after her release by Dr. Kelley. Because of the continuing problems, the claimant eventually sought medical treatment on her own and, as indicated above, came under the treatment of Dr. Jeffery Evans, an orthopedic surgeon. Dr. Evans diagnosed the claimant as suffering from carpal tunnel syndrome. Dr. Evans also directed the claimant to undergo a NCV test but, once again, the results were normal. Nonetheless, Dr. Evans was of the opinion that the claimant was suffering from carpal tunnel syndrome and decided to surgically treat this condition. Dr. Evans also directed the claimant to remain off work entirely beginning November 1, 2005.

Dr. Evans performed a right carpal tunnel release surgery on the claimant on November 16, 2005. In an operative note, he stated the following discovery: "A thick

tight transverse carpal ligament overlying an injected median nerve epineurium indicative of compressive neuropathy of the median nerve."

After treating the claimant's carpal tunnel condition, Dr. Kelley turned to the claimant's continuing thumb problem. Because of her problem with a locking thumb, he determined that she was suffering from trigger thumb syndrome. He treated this condition surgically on April 5, 2005. In his operative note, he described incising the A1 pulley and that afterwards, the claimant's thumb could be flexed without triggering. Dr. Evans last saw the claimant on April 11, 2006, and stated that she was released to activity as tolerated and she should follow up when needed.

In my opinion, the Majority errs, when they give little weight, or consideration, to Dr. Evans' medical records. Instead, they relied almost entirely upon Dr. Kelley's conclusion that the claimant did not have carpal tunnel syndrome and that she had no permanent impairment as a result of her DeQuervain's tenosynovitis.

I believe that more weight should be given to Dr. Evans for a number of reasons. First, he is a Board Certified orthopedic surgeon and, as such, has a recognized level of expertise when dealing with injuries such as those suffered by the claimant. On the other hand, Dr. Kelley's expertise is in the area of plastic and reconstructive surgery. While I do not question Dr. Kelley's professional competence or suggest that he is not capable of performing hand surgeries as he represents, I do not believe that the opinions of a cosmetic surgeon should be given equal credit as those of someone who is an expert in bone and joint injuries.

The second reason I have for giving more weight to Dr. Evans is because his correct diagnosis and successful treatment of the claimant's condition demonstrates a high degree of knowledge and skill in regard to these types of injuries. Unlike Dr. Kelley, who decided that the claimant did not have carpal tunnel syndrome, Dr. Evans was able to recognize that, in spite of the NCV tests, the claimant's symptoms and positive clinical tests were sufficient to

establish the presence of carpal tunnel syndrome. Dr. Evans' diagnosis was confirmed when he visually observed the nerve compression that was causing her symptoms. Likewise, Dr. Evans more precisely diagnosed the cause of the problem with the claimant's thumb and corrected the defect causing her thumb triggering and locking.

I also find it significant that Dr. Evans' treatment of the claimant was entirely successful. In contrast, Dr. Kelley was unable to correct the claimant's problems and she continued to suffer with pain, numbness, and locking sensations, even after his treatment of her.

I also believe that the treatment rendered by Dr. Evans was related to her admittedly compensable injury. At the time Dr. Evans saw the claimant, she had been unemployed for several months and had not been engaging in the type of activities normally associated with the development of carpal tunnel syndrome or trigger thumb syndrome. Further, the symptoms she described to Dr. Evans were nearly identical to those that she had been describing to Dr. Kelley the previous year. There is simply no evidence

that there is any other intervening event that would have caused the claimant's condition to be aggravated or reoccur, other than the lingering effects of her previous job-related injury. Accordingly, I find that the claimant should have been awarded additional medical benefits and temporary total disability benefits for the time period she was unable to work as a result of that treatment.

Therefore, I must respectfully dissent.

PHILIP A. HOOD, Commissioner