

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F005865

JAMES TABOR, EMPLOYEE	CLAIMANT
ANDY YEAGER MOTORS, INC., AN UNINSURED EMPLOYER	RESPONDENT NO. 1
ANDY YEAGER MOTORS, INC, AN INSURED EMPLOYER	RESPONDENT NO. 2
AIG CLAIM SERVICES, CARRIER	RESPONDENT NO. 2

OPINION FILED MAY 1, 2007

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

Claimant represented by HONORABLE FREDERICK SPENCER,
Attorney at Law, Mountain Home, Arkansas.

Respondent No. 1 represented by HONORABLE JAMES GOLDIE,
Attorney at Law, Harrison, Arkansas.

Respondent No. 2 represented by HONORABLE CAROL L. WORLEY,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the
Administrative Law Judge filed June 30, 2006.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. James Tabor was employed by Andy Yeager Motors from April 1, 1997 through mid-May of 2000.
2. Andy Yeager Motors was uninsured for workers' compensation until April 28, 1999, when AIG Claim Services went on the risk.
3. The claimant's deposition contained in Claimant's Exhibit No. 3 was taken on January 31, 2001.
4. The claimant has failed to establish by a preponderance of the evidence that any of his upper extremity abnormalities at issue in this claim arose out of his employment with Andy Yeager Motors.
5. The claimant has failed to establish that his job duties at Andy Yeager Motors involved rapid repetitive motion of the upper extremities.
6. The claimant has therefore failed to establish that he sustained any compensable upper extremity injury while employed at Andy Yeager Motors.
7. Because the claimant has failed to establish that he sustained a compensable injury, the respondents' defense regarding notice and the statute of limitations are moot.

The claimant alleges that he 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.

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.

CONCURRING AND DISSENTING OPINION

I must respectfully concur in part and dissent in part from the Majority opinion. Specifically, I concur with the Majority's affirmation of the Administrative Law Judge denial of the motion on recusal. However, I must respectfully dissent from the portion of the decision finding that he did not establish that he sustained compensable injuries to his wrists in the form of bilateral carpal tunnel syndrome or to his elbows in the form of bilateral cubital tunnel syndrome.

In the present case, the claimant first sought medical treatment for hand and wrist pain in October 1995. However, the treatment notes from Dr. Thomas Leslie, a

general practitioner in Harrison, Arkansas, dated October 14, 1995, states that the claimant had a decrease in his right hand grip strength. However, after noting that there was no evidence of any fractures, he concluded that the claimant was suffering from arthritis. Dr. Leslie continued to provide treatment for the claimant with occasional treatment of wrist pain and loss of his range of motion. In his treatment note of January 3, 1996, Dr. Leslie indicates that the claimant has some ligament and cartilage damage in his right wrist. In his treatment note of January 11, 1996, the possibility of surgery on the claimant's wrist was discussed but no further treatment was pursued for this problem.

In January 1998, the claimant once again sought treatment from Dr. Leslie indicating some paresthesia and weakness in his arm. However, as noted in his treatment note of January 29, 1998, Dr. Leslie stated that the weakness was radiating from the claimant's neck into his arm and that because of the dermatomal pattern, he was referred to

Dr. Scott Schlesinger, a neurosurgeon for surgical evaluation.

Dr. Leslie's notes did not indicate what the results of the evaluation were. However, in his treatment note of March 22, 2000, Dr. Leslie indicates that the claimant was having lateral numbness in his fingers and tenderness in his wrists. He diagnosed the claimant as having bilateral carpal tunnel syndrome. At that time, he directed the claimant to undergo nerve conduction studies. These studies were positive for the presence of carpal tunnel syndrome and the claimant was later referred to Dr. Thomas Knox, a Harrison Orthopedist, who, in a report dated April 19, 2000, diagnosed the claimant as having carpal tunnel syndrome and joint arthritis.

While the medical records indicate that the claimant did have arthritis of the wrist joint, and that this condition was causing him pain and loss of mobility in his wrist, he did not display symptoms associated with carpal tunnel syndrome until late 1999 and early 2000. The dates of these diagnoses were confirmed by testimony of both

the claimant and his wife that they were advised by Dr. Leslie in 1999 and 2000 that the claimant was suffering from carpal tunnel syndrome. Testimony was also developed, which will be discussed in more detail below, that it was in this time frame that the claimant notified his employer that he was having wrist problems related to his job.

Additionally, the claimant submitted his first AR-C claim form with the Commission, alleging job-related carpal tunnel syndrome, on May 30, 2000.

Therefore, I find that the date of the claimant's injury was on or about March 22, 2000, the date Dr. Leslie diagnosed the claimant with carpal tunnel syndrome. While it is true that the claimant had received treatment for wrist pain and loss of motion at least five (5) years prior to the date, that treatment was diagnosed as arthritis and was treated as such. Arthritis is a very different condition than carpal tunnel syndrome. Significantly, the medical reports from Dr. Leslie in October 1995, make no mention of any pain, tingling, or numbness in claimant's fingers or hands. Those are all symptoms of carpal tunnel syndrome

which are conspicuous in their absence from these medical reports. Even later, when the claimant does complain of radiating pain in his arm in 1998, those are associated with a neck problem and not with his wrist. The first complaint of paresthesia and pain in the claimant's hands and fingers was not until late 1999. Even then, the claimant was not fully diagnosed with carpal tunnel syndrome until the spring of 2000, indicating that his condition was likely related to his work.

As has been often stated by the Commission and the Arkansas Appellate Courts, in order to establish a compensable gradual onset injury, the claimant must prove, by a preponderance of the evidence, that the injury arose out of the course of the employment; the injury must have caused internal or external physical harm that required medical services resulting in disability or death; that the injury was the major cause of the disability or need for treatment; and that the existence of the injury must be established by medical evidence supported by objective findings. In addition, for a gradual onset injury other than

carpal tunnel syndrome, it must also be shown that the cause of the injury was rapid, repetitive motion. Cottage Café v. Collette, 94 Ark. App. 72 ___ S.W. 3d ___ (2006).

The claimant's employment duties involved mechanical repairs of automobiles, car detailing, and various odd jobs at the respondent's car dealership. These jobs required him to use a variety of wrenches, screw drivers, and other hand and power tools and related implements involving the repair and cleaning of automobiles and maintaining the dealership grounds. All of these jobs were hand-intensive and required the claimant to engage in gripping, twisting, pinching, and lifting with his hands and arms in a rapid and repetitive fashion. Obviously, these types of activities would put a considerable amount of stress on the claimant's wrist and elbows. Also, given the claimant's age and his prior arthritic conditions, it seems likely that he would have the propensity toward developing gradual onset injuries performing those types of activities.

It is also apparent that it was these job-related activities that caused him to develop carpal and cubital

tunnel syndrome. The claimant's credible testimony was that while he occasionally did light repairs to his own personal vehicles or those of his immediate family members, he rarely did this on a regular basis and did not engage in those types of hand-intensive activities anywhere besides his job. Also, the existence of carpal tunnel syndrome and cubital tunnel syndrome were verified by nerve conduction studies showing a latency in the nerve conduction in the nerves in the claimant's wrists and elbows. I also note that in his operative reports, Dr. Knox observed the presence of nerve impingements when he performed the claimant's carpal tunnel and cubital tunnel release surgeries.

In sum, I find that the claimant had fully satisfied all of the requirements of gradual onset injury to the wrist and elbow. Accordingly, I would have reversed the decision of the Administrative Law Judge and awarded benefits. Therefore, I must respectfully dissent.

PHILIP A. HOOD, Commissioner