

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F611876

ELODIA SANTILLAN-SOTO,  
EMPLOYEE

CLAIMANT

TYSON FOODS, INC.,  
SELF-INSURED EMPLOYER

RESPONDENT

TYNET CORPORATION,  
TPA

RESPONDENT

OPINION FILED MAY 15, 2009

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

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

Respondent represented by the HONORABLE E. DIANE GRAHAM,  
Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The respondent appeals an administrative law judge's  
opinion filed September 30, 2008. The administrative law  
judge found that the claimant sustained a compensable injury  
and was entitled to reasonably necessary medical treatment.  
After reviewing the entire record *de novo*, the Full  
Commission affirms the administrative law judge's opinion.

## I. HISTORY

The record indicates that Elodia Santillan Soto, age 55, was hired at Tyson Foods, Inc. on January 10, 2000. The claimant described her work for the respondent-employer: "Debone the chicken....You would cut the wing and you would debone the legs and then the breasts, and you would use these fingers to debone the breast." The claimant testified on cross-examination that she noticed her hands were bothering her after two to three months.

The record contains a medical note dated October 9, 2000: "Please move her to a position that does not require repetitive use of the thumb such as washing chicken parts due to an overuse syndrome of the thumbs."

The claimant testified that she reported her problem in 2001. Dr. Gary L. Moffitt wrote to the respondent on April 11, 2001: "Ms. Santillan is seen today with a complaint of pain, numbness and weakness of both hands. It has been bothering her for the past few weeks if not longer. She works doing deboning. She does have adult onset diabetes mellitus...She does have bilateral carpal tunnel syndrome of unknown etiology....She is being treated with bilateral splints. I would like her to continue these. She is to diminish gripping with both hands at work. She is to be

reevaluated in two weeks. If she is not improved at that time we may need to consider physical therapy."

Dr. Moffitt reported on April 25, 2001, "She says she is doing quite a bit better. Her right hand is pretty much back to normal. The left hand still has numbness along the fingertips along the median nerve distribution. She is not experiencing as much pain or as much of a loss of strength....I would like her to work back into her regular job slowly. I am going to check her again in two weeks."

The claimant followed up with Dr. Moffitt on May 11, 2001: "She is really not doing much better. She is still having pain in her wrist and hand and numbness....I think it is best at this time to back her off to basically working in the supply room only and will try some physical therapy."

The claimant began physical therapy on May 15, 2001. A physical therapist noted on May 24, 2001, "Patient states that she no longer has pain in her right wrist. Patient states that her wrist feels a lot better and that it doesn't bother her while she is working."

Dr. Moffitt wrote to the respondent on June 1, 2001:

Ms. Santillan is seen today for recheck for bilateral carpal tunnel syndrome with adult onset diabetes mellitus. She is doing much, much better. She has been moved into the supply room. She is not having to do as much gripping. She has

done physical therapy. Her strength is improved. She is having less pain and less numbness.

On exam, she has wonderful strength today. Tinel's is negative. She has good range of motion and no swelling.

Her condition is improved. She is released to work at full duties. If she goes back to doing line work I am concerned that she is going to have recurrence of her symptoms. If she stays on modified duty program like she is doing now she should do much better.

The claimant described her duties after being transferred to the supply room: "I would not spend the whole time there. I would clean the bathrooms; I would clean the windows; I would mop the floors. Sometimes if an office was unoccupied, I would go and clean it, and then I would mop the floor, and I would go throw the trash out." The claimant testified that Maria Larin supervised her cleaning duties for six months, and "My hands would hurt more, my hands would get numb more, because she was making me work more....In the way that she wanted things to be done quicker, in the way that she would go to the bathroom, and I would clean it and she would go look at it, and if it wasn't clean, she wanted me to clean it."

A respondent-employer Health Assessment dated January 13, 2003 indicated that the claimant was to work as a housekeeper for the non-smoking breakroom.

The parties stipulated that the employment relationship existed on all relevant dates, including July 6, 2006. Dr. Konstantin V. Berestnev reported on that date:

At the request of and authorization by Tyson of Rogers, we are seeing Ms. Elodia Santillan. Ms. Santillan is a patient of our clinic who was seen initially in April of 2001 and diagnosed with carpal tunnel syndrome. Also, the patient was found to be diabetic. She was doing better in June of 2001 from her bilateral carpal tunnel syndrome and was released with some permanent restrictions. She has been working since then in the supply room and was doing fine up until today, the day of the clinical visit 07-06-06, when she was told that the supply room position is going to be eliminated. The patient was informed that she needs to be placed in a different job. She comes here for job placement. The patient is a diabetic whose diabetes, according to her, is under control....The patient states that she continues to have pain in her right hand and numbness at nighttime. The pain radiates up to her neck. The patient states that she tried to work for two days in deboning and developed more pain and discomfort in her right hand. She hasn't had any recent evaluation of her carpal tunnel syndrome.

On physical examination, she has no evidence of intrinsic muscle atrophy. She has a strongly positive Tinel's sign on the right, Phalen's sign. There is a negative Finklestein's sign. There is good extension and flexion strength in each finger, but there is very poor grip strength on the right. The patient has full range of motion in her elbows. No pain to palpation of the lateral or medial epicondyle....

Assessment: The patient has diabetes and bilateral carpal tunnel syndrome worse on the right.

Treatment plan: The carpal tunnel syndrome has not been assessed lately and the patient, in my

opinion, cannot safely work in any of the positions for which a work description was provided to me. The positions which were analyzed include pack out support, maintenance, deboner, and general labor positions. With her weak grip strength on the right hand unaddressed symptoms of carpal tunnel syndrome, I think she needs to have her carpal tunnel syndrome assessed, treated and then reevaluated for the job placement.

Dr. Berestnev also indicated on July 6, 2006 that the claimant needed nerve conduction velocity testing.

The claimant testified on direct examination:

Q. What happened in July of 2006?

A. They laid some people off and they laid me off because I had less time there.

Q. Before you were laid off, were you moved to the deboning line for a period of time?

A. They took me there two days.

Q. What exactly did you do during those two days?

A. In the morning, I went to give out the uniforms, and then they put me out to debone.

Q. And how long did you debone that day?

A. The first day, I lasted there for the eight hours, and the other day was two hours.

Q. Why did you only debone two hours the second day?

A. Because the nurse got there and she told me to wait because Maria Larin would get there. And then there, I don't know who else was helping, but they didn't send me to debone; they sent me to clean.

Q. Did your day and two hours on the deboning line make your hands feel any different?

A. Yes....In the way that my hands would hurt a lot and they would fall asleep; they would get numb.

Q. Had that been the same symptoms that you were having for the six months you just described earlier that Maria Larin was your supervisor?

A. Yes.

Q. Between the years 2001 and 2006, did you have any symptoms in your hands?

A. I always had it when I felt it, but I wouldn't say anything for fear of losing my job.

The claimant agreed on cross-examination that Matthew Clawson was her supervisor for the two days she returned to work on the deboning line. Matthew Clawson testified that he was a supervisor on one of the deboning lines. Mr. Clawson testified for the respondent:

Q. Do you know Elodia Santillan Soto, who just testified here?

A. Yes....

Q. How many days did she work on the debone line?

A. For me personally, it was one day, briefly, a 30-minute period. I came to work; we were going through the amount of team members we have there. Basically, you have to, you know, come up with how many you've got to determine how you're going to run for the day. I remember seeing her, saying, "What are you doing out here?" and she said, "Maria sent me out here." I left it at that and I

said, "Well, I'll talk to Maria when she gets here about it," because I knew they were eliminating a supply room position, so I figured she had at least reported. It didn't take more than 30 minutes and the plant manager showed up and called me on the radio and she started asking, "Where is the lady that worked in the supply room, Elodia?" and I said, "Well, I have her on the line." She said, "Get her off the line now. We'll talk about it later. So I got her off the line. I said, "You go to the nurse's office, you know, sit in the break room, wherever need be until Maria gets here and you all can discuss this." That was the last, you know, I had anything to do with her, anything to do with it. It was later explained to me by the nurse that she was still on permanent restrictions and she should not have been on the line.

Q. Did you observe her during that 30 minutes on the line that day?

A. Yes....I would say she maybe touched seven to eight chickens during that time....

Q. Did Ms. Santillan Soto make any comment to you about her hands hurting her as a result of working on the debone line?

A. No, ma'am.

The record indicates that the claimant signed a Leave Of Absence Application on July 10, 2006. The Leave Of Absence Application indicated that the leave requested by the claimant was "Medical (Non FMLA)" and "Non-Work Related." (Although the Expected Return Date was July 18, 2006, the claimant's leave was extended on August 8, 2006, September 11, 2006, October 9, 2006, and July 11, 2007.)

The claimant testified on cross-examination regarding the Leave Of Absence Application, "I did sign that paper. They didn't tell me what it was for, and I don't remember if I signed it before they paid me for the 13 weeks of disability." The claimant agreed that she did not work for the respondent-employer after July 2006.

Dr. Moffitt wrote to Tawnya Ledgerwood, an RN with Tyson, on September 29, 2006: "Ms. Santillan is seen today with a complaint of pain in her left shoulder. She states it has been a problem ever since 2001. She has no specific injury. She has not been working....The pain radiates down her arm and she is having some numbness in her fingers, but she has known carpal tunnel syndrome bilaterally as well....I think she most likely has a frozen shoulder in conjunction with the diabetes. She is referred to her personal physician for further treatment. She has no restrictions based on the shoulder problem since I do not feel that it is likely that it is related to her previous work activities."

The claimant signed a Team Member Statement Of Illness on September 29, 2006. To the question, "1. What do you think caused your problem?", the claimant replied "Go to the

line to debone the chicken." The claimant described discomfort in both hands and her left shoulder.

The claimant also signed a Form AR-N, Employee's Notice Of Injury, on September 29, 2006. The claimant indicated that the date of accident was July 6, 2006 and discussed the cause of injury: "TM reports bilateral hand pain after deboning for approx. 30 min." The claimant testified on cross-examination regarding the Form AR-N, "I didn't say 30 minutes. In two hours and then eight hours."

Dr. Moffitt corresponded with Ms. Ledgerwood on October 2, 2006:

This letter is in follow-up to Ms. Santillan's visit on 09-29-06. At that time she was complaining of pain in her left shoulder and was diagnosed as having an adhesive capsulitis in conjunction with diabetes. I did not see any relationship between it and work. She had been given work restrictions previously due to a problem with her hands. I feel that she needs to continue to have those work restrictions in reference to her hands, but since the shoulder problem did not appear to me to be work related I did not give her any restrictions based on a shoulder disorder.

From what I understand, there is a question as to whether or not she possibly could have reagravated a carpal tunnel syndrome by working three hours in production over a three week period of time. From what I understand, she never did the duties for more than 30 minutes at a time. Although it is possible that she might have developed some temporary inflammation secondary to this, I am high (sic) skeptical that she could have significantly reagravated a carpal tunnel

syndrome with this amount of work, and any type of inflammation that might have occurred from this, in my opinion, most likely would have been self-limited and should have abated with a few days to a week or two....

Dr. James E. Kelly, III, a plastic and reconstructive surgeon, corresponded with a representative of Tynet on December 10, 2007:

Thank you very much for referring Elodia Santillan-Soto for consultation. As you are aware, this is a 55 year old female who has been working for Tyson for approximately six and a half to seven years. She stated that she started working on a de-boning line and after about 3 months she started developing numbness in her hands. She was placed on different jobs but essentially her major complaint over this whole period has been that she has had continuous numbness in both hands and weakness in both hands. For a period she had some frozen shoulder, which was treated with injection and therapy and this has resolved. The only complaint she has at this point is numbness in both hands and also she has a right trigger finger on the 4<sup>th</sup> ray, which sticks in the palm and gives her some pain. She complains of numbness primarily in the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> fingers with both hands being equally problematic. My understanding is it awakes her at night and that she has used nighttime cock up splints but these have not been of any benefit. She has never had EMG-NCV studies completed or any other investigations of her nerve conductions....

She has never had EMG-NCV studies and I think it is important to have these as she does have diabetes and she may very well have some peripheral neuropathy but I have no doubt that she suffers from bilateral carpal tunnel syndrome. I find this a bit odd this has been going on for six years and never been dealt with but that seems to be the story as I have gone through her old records and I certainly think that a carpal tunnel

release likely will benefit her and relieve her complaints and problems. I am going to order the EMG-NCV studies. I will be seeing her back once these have been completed and then make recommendations after we review these.

Electrodiagnostic studies were done on January 10, 2008, with the following conclusion: "Moderate to severe compromise of bilateral median nerves across the wrists involving the sensory components consistent with demyelination."

The claimant followed up with Dr. Kelly on January 28, 2008: "Of no surprise the EMG showed moderate to severe carpal tunnel syndrome and even having demyelination noted. Obviously she will require carpal tunnel release. Seeing her right 4<sup>th</sup> finger is also triggering and giving her pain, I would recommend we start with a right carpal tunnel release and do the right D4 trigger release at the same time."

Dr. Kelly performed the following operative procedure on February 21, 2008: "1. Right carpal tunnel release. 2. Right D4 A1 pulley release. 3. Synovectomy of right D4, FDS and FDP tendons." The pre- and post-operative diagnoses were "1. Right D4 trigger finger. 2. Right carpal tunnel."

Dr. Kelly noted on March 3, 2008, "She is doing very well she is not having any problems." The claimant followed up with Dr. Kelly on March 24, 2008: "She is doing very well. Sensation is improved and she is not having any locking or triggering. At this point in time she can use her hand fully and I will release her back to regular work duties. We will also get her on the schedule 6 or 8 weeks from now for her left carpal tunnel release and, of course, this will also be done under axillary block as an outpatient."

The claimant's testimony indicated that she had not had surgery on the left. The claimant testified regarding her left hand, "It gets numb; it falls asleep. It falls asleep. It does not hurt, but it falls asleep a lot."

A pre-hearing order was filed on April 22, 2008. The claimant contended that she "was injured on June 6, 2006. Her hands and wrist have been injured by the deboning she was doing. Her treating physician recommended treatment that has not been authorized." The respondent contended that "any claim for the April 9, 2001 injury is barred by the statute of limitations. In 2001, claimant was transferred to a job in the supply room to accommodate the permanent restrictions placed on her. No workers'

compensation benefits were paid to or on behalf of the claimant after June 1, 2001. In 2006 claimant performed the debone job on one occasion for 30 minutes. Respondent denies that claimant sustained a work related injury in the form of bilateral carpal tunnel syndrome on or about June 6, 2006. Claimant's carpal tunnel syndrome pre-existed that date and has been present since April 9, 2001.

Alternatively respondent contends that claimant temporarily aggravated her pre-existing condition and the temporary aggravation ended no later than two weeks after July 6, 2006."

The parties agreed to litigate the following issues:

1. Whether the claimant sustained a cumulative trauma injury compensable injury in the form of bilateral carpal tunnel syndrome.
2. The claimant's entitlement to medical services for her bilateral carpal tunnel syndrome.

Dr. Kelly corresponded with the claimant's attorney on June 4, 2008:

I am addressing this letter pertaining to your inquiries about Elodia Santillano-Soto. I don't feel that the thirty minutes that she was placed on a de-boning line has brought on all of her symptoms. I rather think that she had carpal tunnel syndrome and that the aggravation was slowly brought on over time even if she was doing a fairly low repetitive job but general day-to-day use of the hands has slowly brought on and increased her symptoms. The thirty minute issue I don't think is the actual cause it may have made her symptoms worse on a temporary basis but

certainly as times go on her symptoms would of worsened as most peoples do with carpal tunnel syndrome.

A hearing was held on July 7, 2008. At that time, the administrative law judge announced a stipulation by the parties "that in 2001, the claimant did have a compensable injury in the form of a cumulative trauma injury, specifically carpal tunnel syndrome, and was voluntarily paid certain benefits at that time. However, the present claim, even though it also is a claim for a cumulative trauma injury in the form of bilateral carpal tunnel syndrome, does not represent a claim for any benefits attributable to the 2001 injury."

The administrative law judge filed an opinion on September 30, 2008. The administrative law judge found, among other things, that the claimant sustained a compensable injury in the form of carpal tunnel syndrome. The administrative law judge found that medical treatment provided by Dr. Kelly was reasonably necessary. The respondent appeals to the Full Commission.

## II. ADJUDICATION

### A. Compensability

Ark. Code Ann. §11-9-102(4) (A) (Repl. 2002) 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 employee's burden of proof shall be by a preponderance of the evidence. Ark. Code Ann. §11-9-102(4) (E) (Repl. 2002). Preponderance of the evidence means the evidence having greater weight or convincing force. *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947). 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). "Major cause" means "more than fifty percent (50%) of the cause," and a finding of major cause shall be established according to the preponderance of the evidence. Ark. Code Ann. §11-9-102(14).

In the present matter, the Full Commission finds that the claimant proved she sustained a compensable injury. The claimant began working for the respondent-employer in

January 2000. The claimant manually deboned chickens. The claimant testified that her hands began bothering her after two to three months. The claimant was diagnosed as having "overuse syndrome of the thumbs" in October 2000. Dr. Moffitt, a company physician, saw the claimant in April 2001 and diagnosed "bilateral carpal tunnel syndrome of unknown etiology." Dr. Moffitt assigned work restrictions, including "diminished gripping with both hands at work." Dr. Moffitt eventually took the claimant off the chicken deboning line. A physical therapist noted in May 2001 that the claimant's right wrist symptoms had improved as a result of being off the line.

Dr. Moffitt informed the respondent in June 2001 that the claimant's symptoms had improved, and he released the claimant to work at full duties. Dr. Moffitt cautioned, however, that "If she goes back to doing line work I am concerned that she is going to have recurrence of her symptoms. If she stays on modified duty program like she is doing now she should do much better." The claimant testified that she began working in the supply room but that the pain and numbness in her hands continued.

On July 6, 2006, Dr. Berestnev examined the claimant: "The patient states that she tried to work for two days in

deboning and developed more pain and discomfort in her right hand....The patient has diabetes and carpal tunnel syndrome worse on the right." Dr. Berestnev also noted, as had Dr. Moffitt previously, that the claimant could not safely work on the deboning line. The claimant testified that she had been placed back on the deboning line for two days in July 2006. The claimant testified that this work caused renewed pain and numbness in her hands. The Full Commission finds that Dr. Berestnev's report corroborated the claimant's testimony, and we find that the claimant was a credible witness. We note Matthew Clawson's testimony that he personally saw the claimant work deboning a few chickens for only a 30-minute period. We again find, however, that the claimant credibly testified she worked for two days back on the line. We also note Mr. Clawson's testimony, "she was still on permanent restrictions and should not have been on the line." We find Dr. Moffitt's October 2, 2006 correspondence to be entitled to minimal weight when compared to the claimant's credible testimony. Dr. Moffitt was not personally aware of how long the claimant had worked on the deboning line in 2006.

The claimant contends that she sustained a compensable injury in 2006. The parties agreed at hearing that the

claim was not for a 2001 injury. The Full Commission finds that the claimant proved she sustained an injury, in the form of bilateral carpal tunnel syndrome, which caused physical harm to her body and which arose out of and in the course of her employment with the respondent in 2006. The claimant credibly testified that her upper extremity symptoms were causally related to her work for the respondent, including her work on the deboning line for two days in 2006. The compensable injury required medical services. The claimant established a compensable injury by medical evidence supported by objective findings, including the objective electrodiagnostic studies done in January 2008. The claimant proved by a preponderance of the evidence that her compensable bilateral carpal tunnel syndrome injury was the major cause of her need for treatment. The administrative law judge's decision is affirmed.

B. Medical Treatment

The employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a) (Repl. 2002). The claimant must prove by a preponderance of the evidence that

she is entitled to requested medical treatment. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Dalton v. Allen Eng'g Co.*, 66 Ark. App. 201, 989 S.W.2d 543 (1999).

In the present matter, the Full Commission has determined that the claimant proved she sustained a compensable bilateral carpal tunnel syndrome injury. Dr. Kelly performed a right carpal tunnel release, pulley release, and synovectomy on February 21, 2008. Dr. Kelly's post-operative reports and the claimant's credible testimony both indicated that the claimant's condition improved after surgery. Post-surgical improvement is a proper consideration in determining whether surgery was reasonably necessary. *Winslow v. D & B Mech. Contrs.*, 69 Ark. App. 285, 13 S.W.3d 180 (2000). The Full Commission finds that Dr. Kelly's treatment, including surgery was reasonably necessary in connection with the compensable injury.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant proved she sustained a compensable injury. The Full Commission finds that the claimant proved Dr. Kelly's treatment was reasonably necessary. We therefore affirm the administrative law

judge's opinion. For prevailing on appeal, the claimant's attorney is entitled to a fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

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A. WATSON BELL, Chairman

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PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

**DISSENTING OPINION**

I must respectfully dissent from the majority opinion finding that the claimant sustained a compensable gradual onset injury on June 6, 2006, for which she is entitled to indemnity and medical benefits. Based upon my de novo review of the entire record, without giving the benefit of the doubt to either party, I find that the claimant has failed to meet her burden of proof.

The parties stipulated at the hearing that "that in 2001, the claimant did have a compensable injury in the form of a cumulative trauma injury, specifically carpal tunnel syndrome, and was voluntarily paid certain benefits at that time. However, the present claim, even though it is also a claim for cumulative trauma in the form of bilateral carpal tunnel syndrome, does not represent a claim for any

benefits attributable to the 2001 injury." Thus, the claimant was not making a claim for any benefits associated with her carpal tunnel syndrome injury which manifested itself in 2001. Rather, claimant's claim is for a gradual onset injury to her hands occurring in June of 2006. The evidence does not support a finding of injury in 2006.

In order to prevail on a gradual onset claim, the claimant must prove by a preponderance of the evidence that she sustained an injury causing internal or external harm to the body which arose out of and in the course of her employment and which required medical services or resulted in disability or death. In addition, the claimant must prove by a preponderance of the evidence that the injury was the major cause of the disability or need for treatment. Ark. Code Ann. § 11-9-02(4)(E)(ii)(Supp. 2005) Finally, the claimant must establish a compensable injury by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D); see also, Hapney, supra.

If an employee fails to establish by a preponderance of the credible evidence any of these requirements for establishing the compensability of the alleged injury, she fails to establish the compensability of the claim and the claim must be denied. Reed, supra.

In applying the controlling law under Act 796 of 1993 to the evidence in this case, the Commission is to strictly construe the Act. Ark. Code Ann. § 11-9-704(c)(3). Under the gradual onset exception to the specific incident requirement, the claimant must establish a causal connection between her injury and her employment by medical evidence supported by objective findings and she must establish that her injury is the major cause of her disability or need for treatment.

The overwhelming evidence reveals that the claimant developed carpal tunnel syndrome within months of beginning employment with respondent in 2001 when she was working on the line. Upon reporting her injury, the claimant was provided medical treatment and placed in a job that did not require extensive hand gripping. Nevertheless, the claimant testified on direct examination that even after she was placed in this light duty job, "I always had [symptoms] when I felt it, but I wouldn't say anything for fear of losing my job." Claimant further admitted that it was her mistake for never reporting the problems with her hands during this period of time. When asked on cross-examination if her hands were doing fine from mid-2001 up until June 6, 2006, the claimant testified, "Doing, no. I

was able to work; they would hurt, but I was able to work." Thus, despite the claimant's work in 2006 that may have exacerbated her pain, the overwhelming weight of the evidence clearly reveals that the claimant's gradual onset injury first manifested itself in 2001, and continued to bother the claimant throughout her employment with respondent. Claimant declined to make a claim for benefits as a result of her 2001 injury and now insists that her injury date is June of 2006.

While claimant's hand problems may have arisen out of her employment in 2001, I find that the claimant has failed to prove by a preponderance of the evidence that she sustained a compensable injury in the form of bilateral carpal tunnel syndrome that arose out of her employment in 2006. A preponderance of the evidence fails to establish as causal connection between the claimant's carpal tunnel syndrome and her work in 2006, as the claimant's carpal tunnel syndrome predated this alleged injury date. Therefore, I must respectfully dissent.

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KAREN H. MCKINNEY, Commissioner