

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F705369

SUZANNE SQUIRES, EMPLOYEE CLAIMANT

ARKANSAS STATE HIGHWAY &  
TRANSPORTATION DEPARTMENT, EMPLOYER RESPONDENT

PUBLIC EMPLOYEE CLAIMS DIVISION, CARRIER RESPONDENT

**OPINION FILED MARCH 17, 2009**

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

Claimant is not represented by counsel, but appears *pro se*.

Respondent represented by HONORABLE WILLIAM L. WHARTON,  
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

Respondents appeal from a decision of an Administrative Law Judge finding that the claimant's claim for benefits was not barred by the statute of limitations. Based upon our de novo review of the entire record, without giving the benefit of the doubt to either party, we find that the Administrative Law Judge misapplied the law with regard to when the claimant became aware of her condition. Therefore, we find that the decision of the Administrative Law Judge must be reversed.

The facts in this claim are not in dispute. The claimant first became aware of a problem with her right upper extremity in September 2004. On January 24, 2005, the claimant sought medical treatment from Dr. Kevin Roberts with Arkansas Physician Management for complaints of "carpal tunnel numb from elbow to fingers." Upon examination, Dr. Roberts noted a "tender medial epicondyle" and "numbness in thumb 1<sup>st</sup> 2<sup>nd</sup> fingers." Although a diagnosis was not provided in the medical report for this office visit, Dr. Roberts stated in a hand written note dated July 28, 2008, "On exam she had a tendonitis at her elbow with numbness from there going to her hand. I never diagnosed her with carpal tunnel at the time."

The claimant testified that her pain was controlled with medication for a period of time. Then her pain increased and she "couldn't stand it any longer." The claimant returned to Dr. Roberts on January 30, 2007 for a follow-up on her right hand. Dr. Roberts noted right wrist pain and a questionable Tinels finding and diagnosed the claimant with carpal tunnel syndrome.

The claimant did not file her present claim for benefits until April 16, 2007. On every form completed and signed by the claimant, she consistently listed September 2004 as the date of the accident or the date of injury. Likewise in her handwritten letter to the Administrative Law Judge, the Claimant stated:

When I first recall having discomfort & numbness in my right arm & hand was in Sept. of '04. It may have been before that, but I cannot recall. I was often commenting to my supervisors, and others within my office, of this discomfort, especially after a busy day of typing and answering telephone (14 lines). I, and others, wondered aloud if I was starting to get carpal tunnel syndrome...

Claimant testified that she often complained about her pain to her boss but that he did not advise her to file a claim for workers' compensation. In response, respondents questioned claimant with regard to the posting of Form P throughout her place of employment.

The claimant's testimony as well as her report of injury forms clearly reveals that the claimant's condition for which she seeks benefits first began in September of

2004. The problem arises because when the claimant sought treatment in 2004, she was not diagnosed with carpal tunnel syndrome, but was treated for tendonitis. Nevertheless, the claimant exhibited the same complaints of pain and numbness in her right upper extremity from her elbow to her hand. While medication temporarily controlled her complaints for a period of time, her symptoms continued to re-emerge until she was once again forced to seek medical treatment. It was not until this second doctor's visit that the claimant was finally diagnosed with carpal tunnel syndrome.

In Pina v. Wal-Mart Stores, Inc., 91 Ark. App. 77, 208 S.W.3d 236 (2005), the Arkansas Court of Appeals set forth the test for when the statute of limitations begins to run on carpal tunnel claims. In this regard, the Court stated:

It has long been held that the statute of limitations does not commence to run until the true extent of the injury manifests and causes an incapacity to earn wages sufficient to give rise to a claim for disability. Act 796 of 1993 provides that for purposes of statute of limitations, "the date of compensable injury shall be defined as the date an injury is caused by an accident as set forth in § 11-9-102(5)." However, this

amendment did not address the injury date with regard to gradual-onset injuries - the type presented in Pina's claim. In Minnesota Mining & Manufacturing v. Baker, 337 Ark. 94, 982 S.W.2d 11 (1999), our supreme court addressed when a scheduled injury claim becomes compensable for statute of limitations purposes, In Baker, the court reasoned that loss of earnings are conclusively presumed in scheduled-injury cases; therefore, the statute of limitations begins to run when the scheduled injury became apparent to the claimant. Here, because Pina's injuries are scheduled under the Workers' Compensation Act, the statute of limitations began to run when the injury became apparent to her. The Commission determined, based on her testimony, that Pina's injury became apparent at least by the date she reported her symptoms of pain and numbness to her supervisors in October 1999 and she was provided accommodations by her employer.

Pina v. Wal-Mart Stores, Inc., supra. (citations omitted).

Like the claimant in the present claim, Pina argued that she did not become aware of her actual diagnosis until a later date when the doctor correctly diagnosed her with carpal tunnel syndrome. In addition, since she did not know the nature of her condition, Pina contended that despite the fact that she first voiced complaints of pain and numbness

in 1999, she did not become aware that her condition was work related in the fall of 2001. Moreover, like the claimant in the present claim who testified that she thought her symptoms would go away after seeking treatment, Pina honestly believed that her symptoms would go away when accommodations were made in 1999. Nevertheless, the Commission found, and the Court of Appeals affirmed, that because the claimant's complaints were sufficient enough to voice complaints to her supervisor in 1999, that her injury became apparent to her by at least that date. The actual date of a correct diagnosis, as well as, the actual date that a claimant learns that her condition is causally related to her work is immaterial. "A claimant's awareness that her injury is causally related to the working environment is not an element of the inquiry. Pina v. Wal-Mart Stores, Inc., supra; Smith v. Aluminum Co. of Am., 78 Ark. App. 15, 76 S.W.3d 909 (2002).

In a subsequent case, the Arkansas Court of Appeals reversed a decision by the Full Commission which found that a claim commenced when "...the injury 'manifests' and the claimant begins to lose time from work, requires

medical attention, and is no longer able to perform his job." See Cottage Café v. Collette, 94 Ark. App. 72, 226 S.W.3d 27 (2006). In Cottage Café v. Collette, supra., the Court affirmed its previous holding in Pina, that the statute of limitations begins to run or that a claim commences when the claimant becomes aware of the injury.

The question is not when did the claimant in the present case first become aware that she actually had carpal tunnel syndrome as diagnosed by her doctor. Rather, the proper question as established by the Court of Appeals in Pina v. Wal-Mart Stores, Inc. supra., and reaffirmed in Cottage Café v. Collette, supra., is when did the injury become apparent to the claimant or stated another way when did the claimant become aware of her injury. The answer to both questions is the same. The claimant in the present case first became aware of her injury when she notice "discomfort & numbness in her right arm & hand... in Sept. of '04." The claimant did not file the present claim for compensation until April 2007. Therefore, we are constrained to find that the claimant's claim for benefits is barred by the statute of limitations. Accordingly, the decision of the

Administrative Law Judge is hereby reversed and this claim for benefits is denied and dismissed.

IT IS SO ORDERED.

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A. WATSON BELL, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

**DISSENTING OPINION**

I must respectfully dissent from the majority opinion. Based on a de novo review of the record, I find the majority has erred. The evidence of record clearly shows that the claimant's 2005 symptoms were related to tendonitis, not carpal tunnel syndrome. To reach its erroneous conclusion, the majority has not only erroneously disregarded evidence of record but has also engaged in impermissible conjecture and speculation, and therefore, I must respectfully dissent. In Pina v. Wal-Mart Stores, 91 Ark. App. 77, 208 S.W.3d 236 (2005), the Court of appeals

addressed the question of when a scheduled gradual onset carpal tunnel injury commences. In Pina, the Commission found that the claimant was "aware" of her condition in 1999, since she had first complained of her symptoms of numbness in her hands in October of 1999, although she was not diagnosed with carpal tunnel until January of 2007. Here, although the claimant suspected she may have had carpal tunnel syndrome in 2005, she had symptoms of and was treated for tendonitis, not carpal tunnel syndrome. In fact, the claimant's doctor specifically addressed this issue:

To whom it may concern, Suzanne Squires has been a long time patient at my clinic. She had a visit 1/24/05 in which she felt she had carpal tunnel syndrome. On exam, she had a tendonitis in her elbow with numbness from this going to her hand. I never diagnosed her with carpal tunnel at that time. She then had a problem and was diagnosed with carpal tunnel syndrome on 1/03/07....

I find that there is simply no evidence of record, beyond conjecture and speculation, indicating that the claimant's symptoms in 2005 were related to carpal tunnel syndrome. The evidence of record clearly shows that the claimant had symptoms of and was successfully treated for

tendonitis in 2005. For the majority to find that the claimant's symptoms in 2005 were not, in fact, tendonitis, but were instead carpal tunnel syndrome, is contrary to the evidence of record and requires impermissible conjecture and speculation. The claimant became aware of symptoms of carpal tunnel syndrome and was diagnosed with carpal tunnel syndrome in 2007. As such, this claim for benefits for carpal tunnel syndrome was timely filed, and the statute of limitations does not bar this claim.

For the aforementioned reasons I must respectfully dissent.

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PHILIP A. HOOD, Commissioner