

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. F810089

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| LORI SHARP, EMPLOYEE                      | CLAIMANT   |
| MCKEE FOODS CORPORATION, EMPLOYER         | RESPONDENT |
| RISK MANAGEMENT RESOURCES,<br>CARRIER/TPA | RESPONDENT |

OPINION FILED NOVEMBER 3, 2010

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

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

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

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed June 30, 2010.

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

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on April 7, 2010, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.
2. Claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment recommended by Dr. Kelly.

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.

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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. After a de novo review of the record, I find that the claimant is entitled to the medical treatment recommended by Dr. Kelly. I

would reverse the decision of the Administrative Law Judge.

#### HISTORY

The claimant is a 50-year-old woman who worked at McKee Foods on a line, removing damaged product from the belts. On March 14, 2008, her left hand and wrist were injured when her cleaning rag got caught in the conveyor belt, and her left hand was pulled under the belt into a roller. She was taken to the emergency room, where x-rays were taken, and she was given medication. She was then seen by the respondent's doctor, Dr. Cathleen Vandergriff. Dr. Vandergriff prescribed medications for swelling and pain. She also prescribed physical therapy, and provided a splint. A nerve conduction study was performed and was reported as being normal. Dr. Vandergriff then referred the claimant to Dr. Terry Sites. An MRI was performed, which revealed a triangular fibro-cartilage complex tear. The claimant was then referred to Dr. Benafield, a hand specialist. Dr. Benafield agreed that the claimant was suffering from left wrist triangular fibro-cartilage complex tear (TFC), and he performed surgery on the left hand on October 6, 2008. Although the claimant was still experiencing pain, on May 4, 2009, Dr. Benafield opined that she was at maximum medical improvement, and released her. When the claimant's hand continued to bother her, she went back to Dr. Benafield, who prescribed medication and a splint. She was seen again on August 31, 2009, and Dr. Benafield

recommended physical therapy for what he opined was extensor tendonitis. After receiving a change of physician, the claimant was seen by another hand surgeon, Dr. James Kelly, on October 9, 2009. Dr. Kelly found that the claimant was suffering from Guyon's canal and cubital tunnel syndrome, for which he recommended the reasonable and necessary treatment of surgery.

#### DISCUSSION

The phrase "arising out of the employment" refers to the origin or cause of the accident, so the employee is required to show that a causal connection exists between the injury and his employment. Gerber Products v. McDonald, 15 Ark. App. 226, 691 S.W.2d 879 (1985). Arkansas Courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on evidence that the injury manifested itself within a reasonable period of time following the incident so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. Hall v. Pittman Construction Co., 234 Ark. 104, 357 S.W.2d 263 (1962). The Court has stated that if "months" have passed between an accident and the manifestation of an injury, reasonable men might disagree about the existence of a causal connection, See Kivett v. Redmond Co., 234 Ark. 855, 355 S.W. 2d 172 (1962); Wentz v. Servicemaster, 75 Ark. App. 296, 57 S.W. 3d 753 (2001).

Here, the claimant did not have any problems with her wrist, hand, or elbow before her traumatic injury. Only after her work injury did she begin to have problems with her hand and, ultimately, with ulnar neuritis. Since her injury, she has had problems with her hand and wrist to the point that she has been unable to even perform daily activities such as buttoning buttons and shucking corn. This has continued, even after her surgery by Dr. Benafield. The claimant testified that her symptoms of tingling, numbness, and pain that radiates up her arm were bothering her before the surgery and continued after the surgery. This is supported by Dr. Benafield's note of May 14, 2009. At that time, he released her at maximum medical improvement, but also stated that she was still having pain. More importantly, it should be kept in mind that she never had any of these symptoms before the crushing injury to her hand.

It was found in Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982) that the healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. Dr. Benafield, while the treating physician, obviously released the claimant before all treatment that could improve the claimant was tried. Because of her ongoing problems, the claimant finally asked for a change of physician. She was granted a change of physician to Dr. Kelly and, after examining

the claimant, he opined that she would benefit from surgery. Dr. Kelly stated:

I examined her today. She has a positive Tinel's and Phalen's compression test at the wrist and elbow. She has obvious distribution in the ulnar nerve distribution both on the back of the hand as well as the fingers. In light of this, I feel that she has Guyon's canal and cubital tunnel syndrome. Two-point discrimination is also down and her sensation is quite blunted.

As shown above, he diagnosed her with Guyon's canal and cubital tunnel syndrome. As commonly known, cubital syndrome is compression or traction of the ulnar nerve at the elbow. The ulnar nerve is commonly irritated at the elbow or the wrist. Cubital tunnel syndrome is most often caused by leaning on the elbow or by prolonged and excessive elbow flexion. In his August 31, 2009 note, Dr. Benafield found, "on exam she really has an equivocal Tinel's over the ulnar nerve at the elbow." Dr. Kelly explains his findings in his letter dated October 26, 2009:

She did injure her hand, but her hand was pulled in a set of rollers. This type of injury causes a lot of swelling in the upper extremity which is a common outcome. I think, quite frankly, Dr. Benafield just missed the fact that she has obvious symptoms related to the Guyon's canal and cubital tunnel. Many times when people get a lot of swelling and crushing type of injury to the

hand, they will sit with their hand propped up resting on the elbow, which causes the compression of the nerve and contusion to the ulnar nerve at the elbow, i.e. cubital tunnel syndrome. Many times this provokes a long-term sequelae which requires cubital tunnel release and submuscular transposition. I hope this is self-explanatory.

The claimant testified that after her injury she was told to elevate her hand. She also said that, when she was working one-armed duty, before and after the surgery, she would prop her left arm on the edge of the line. This certainly fits the scenario explained by Dr. Kelly, along with the symptoms the claimant was experiencing; it is logical that her current problems are related to her work injury, and the surgery recommended is reasonable and necessary.

It should also be noted that, although the NCV performed came back as normal, Dr. Kelly clarified this matter in his letter of April 23, 2010:

In cubital tunnel syndrome, 20% of the populous can have a totally normal EMG/NCV study even though they clinically can have cubital tunnel syndrome. This certainly is, I think, the case. We even could repeat her EMG/NCV. At some point in time likely it will convert, but the problem is if you wait until a positive EMG is obtained, if it does even become positive, it likely will result in a permanent nerve injury due to the fact that the ulnar nerve is quite

fickle, and that even on decompression sometimes recovery of function is not 100%. Clinically she certainly complains of all the appropriate issues with a person who has this type of nerve compression, and she has some mild intrinsic weakness on her physical exam.

Clearly, Dr. Kelly has a reasonable medical certainty of his diagnosis. This is based upon his years of surgical and clinical experience. He is the authorized treating physician, and his opinion should be given great weight. As such, contrary to the majority, I would reverse the decision of the Administrative Law Judge and award the medical treatment recommended by Dr. Kelly.

For the aforementioned reasons, I must respectfully dissent.

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PHILIP A. HOOD, Commissioner