

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
CLAIM NO. F812033, F812035, G005397

REBECCA BIDWELL, EMPLOYEE	CLAIMANT
TYSON POULTRY, SELF-INSURED, EMPLOYER	RESPONDENT NO. 1
OK INDUSTRIES, INC., EMPLOYER	RESPONDENT NO. 2

OPINION FILED AUGUST 10, 2011

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

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

Respondents No. 1 represented by the HONORABLE E. DIANE GRAHAM, Attorney at Law, Fort Smith, Arkansas.

Respondent No. 2 represented by the HONORABLE R. SCOTT ZUERKER, Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the Administrative Law Judge filed March 30, 2011.

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 all relevant dates between August 4, 2008 and September 2, 2008, the relationship of employee-self insured employer existed between the claimant

and Tyson Poultry. During this period, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$202.00 for total disability and \$154.00 for permanent partial disability. During this period the claimant sustained a compensable injury in the form of bilateral carpal tunnel syndrome.

3. There is no dispute over accrued medical services for this compensable injury. There is no dispute, at present, over temporary total disability benefits for this compensable injury.
4. The claimant has failed to prove by the greater weight of the credible evidence that any additional medical services for her compensable bilateral carpal tunnel syndrome, would be "reasonably necessary" under Ark. Code Ann. §11-9-508. This specifically includes an evaluation of the claimant by a "hand surgeon".
5. On all relevant dates between December 2, 2009 and February 4, 2010, the relationship of employee-self insured employer existed between the claimant and OK Industries, Inc.
6. During this period, the claimant earned wages sufficient to entitle her to weekly compensation benefit of \$240.00 for total disability and \$180.00 for permanent partial disability, should such benefits have been appropriate.
7. The claimant has failed to prove by the greater weight of the credible evidence that she sustained physical injuries to her wrists/hands that arose out of and occurred in the course of the employment with OK Industries, that was not caused by a specific incident, that caused internal or external physical harm to the body and that was the "major cause" of any disability or need for medical services.
8. Respondent No. 1, Tyson Poultry, denies the claimant's entitlement to any additional medical services for her admittedly compensable bilateral carpal tunnel syndrome.

9. Respondent No. 2, OK Industries, Inc., denies the occurrence of any compensable injury to the claimant's wrists/hands during her employment with Respondent No. 2, and controverts any claim for benefits in its entirety.

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.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood concurs, in part, and dissents, in part.

CONCURRING AND DISSENTING OPINION

I must respectfully concur, in part, and dissent, in

part, from the majority opinion. After a de novo review of the record, I agree that Respondent No. 2, OK Industries, has no liability in this claim. However, I find that Respondent No. 1 is responsible for additional reasonably necessary medical treatment, specifically a follow up visit with the change of physician doctor, Dr. Kelly.

FACTS

The claimant is a 38-year-old woman who suffered an admittedly compensable injury of bilateral carpal tunnel syndrome in August of 2008, while working for Tyson. She was seen by general practitioners, Dr. Walker Young and Dr. Keith Holder, and was eventually seen by Dr. Stephen Heim, an orthopaedic surgeon. Dr. Heim ultimately performed carpal tunnel releases on the claimant's hands. He performed her right carpal tunnel surgery on February 3, 2009, and the left surgery on March 9, 2009. He released the claimant to work on April 16, 2009, and released her from care on May 19, 2009. Because the claimant was still experiencing problems with her hands, she was granted a change of physician to Dr. James Kelly, plastic and reconstructive surgeon. He ordered a nerve conduction study on August 4, 2009, and it showed abnormalities. Dr. Kelly prescribed physical therapy for her hands. Although she had not seen him since before the physical therapy, Dr. Kelly released her on November 20, 2009. The claimant then tried to go to work for OK Foods on December 2,

2009. She began experiencing more problems with her hands, and had to stop working after approximately two months. Because of these continuing problems with her hands, she was seen by neurosurgeon, Dr. Michael Morse, who recommended she be evaluated by a hand surgeon. The claimant has requested that she be allowed to return to Dr. Kelly.

LEGAL ANALYSIS

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a) (Repl. 2002). Injured employees must prove that medical services are reasonably necessary by a preponderance of the evidence; however, those services may include that necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury. Ark. Code Ann. § 11-9-705(a) (3) (Repl. 2002); Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995); See Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983). The Court of Appeals has noted that even if the healing period has ended, a claimant may be entitled to ongoing medical treatment if the treatment is geared toward management of the claimant's

compensable injury. See Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230; 184 S.W. 3d 31, (2004), citing Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

Furthermore, this Commission has found that treatment intended to help a claimant cope with chronic pain attributable to a compensable injury may be reasonable and necessary. See Maynard v. Belden Wire & Cable Company, Full Workers' Compensation Commission Opinion filed April 28, 1998 (E502002); See also Billy Chronister v. Lavaca Vault, Full Workers' Compensation Commission opinion filed June 20, 1991 (Claim No. 704562). Additionally, a claimant does not have to provide objective medical evidence of his continued need for treatment. Castleberry v. Elite Lamp Co., 69 Ark. App. 359, 13 S.W. 3d 211 (2000), citing Chamber Door Indus., Inc. v. Graham, 59 Ark. App. 224, 956 S.W. 2d 196 (1997).

Here, it is apparent that the claimant's need for treatment for her compensable carpal tunnel injury is reasonable and necessary and related to her work at Tyson. The claimant had received treatment from Dr. Kelly and received physical therapy for her bilateral carpal tunnel up until November 20, 2009, when Dr. Kelly stated that the claimant was released in a handwritten note on a letter from Tyson's case manager, Susan Randolph. However, Dr. Kelly never saw the claimant after her physical therapy as planned. He was never able to evaluate her progress or lack of progress. The claimant was never told that she was at

MMI nor seen for a permanent impairment rating. It appears that the doctor simply released her on a piece of paper to the company, without seeing the claimant, and without even letting her know she was released. In his last record dated September 31, 2009, Dr. Kelly states:

I think we are dealing mostly with just intertendinous adhesions at the release site likely because she had sutures in for so long, she may have had delay in motion and now we have to work through this. I am going to start some therapy, range of motion, strengthening exercises, scar management, and I want to see her back in four weeks. If we are not gaining anything, then I may need to reopen the hand to do a tenolysis, but hopefully this won't be the case.

The claimant did have some improvement while undergoing physical therapy, but did not ever feel she was completely better. It is crucial to keep in mind that the claimant did not have any problems with her hands before her injury at Tyson. She then had continuous problems after her injury date in August of 2008. She explained that her hands would feel somewhat better, and less painful and numb, when she did not use them. This was the case in the time between her Tyson job and her job at OK Foods. When the claimant began to use her hands at her new job, for the short period of two months, her old problems with her hands again came to the forefront. Since the problems have never been resolved, and the claimant was not allowed to see Dr. Kelly,

the claimant went to see Dr. Morse on July 7, 2010. He opined, "She may need to see a hand surgeon for further evaluation of her hand problem." He also opined in his December 2010 letter, "My examination is consistent with the patient's underlying intertendinous adhesions" as noted by the hand surgeon, Dr. Kelly. He obviously was of the opinion that she needed to see a specialist in order to get to the bottom of her continuing problems. This simply cannot be considered unreasonable or unnecessary treatment. The NCV ordered by Dr. Morse shows objective findings of abnormalities. There are still ongoing problems that need to be addressed by her specialist.

As stated above, not only is it the responsibility of the respondent to take care of continuing problems related to the compensable injury, but also to continue treatment until there is nothing further that can reasonably be done. Allowing the claimant to see Dr. Kelly again is reasonable and necessary to find out what is causing the continuing problems. It is unreasonable to find that a woman that has had no prior hand problems, but has had continuing post-injury problems with carpal tunnel, is not entitled to additional treatment.

CONCLUSION

I find that the claimant has proved by a preponderance of the evidence that a return visit to Dr. Kelly is reasonably necessary medical treatment. For the aforementioned reasons I

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must concur, in part, and dissent, in part, from the majority
opinion.

PHILIP A. HOOD, Commissioner