

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F706071

MARIA SERRANO,  
EMPLOYEE

CLAIMANT

WESTRIM, INC.,  
EMPLOYER

RESPONDENT

ARCH INSURANCE COMPANY,  
INSURANCE CARRIER

RESPONDENT NO. 1

TRAVELERS INSURANCE COMPANY,  
INSURANCE CARRIER

RESPONDENT NO. 2

OPINION FILED MARCH 7, 2011

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 No. 1 represented by the HONORABLE BETTY HARDY,  
Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 represented by the HONORABLE PHILLIP  
CUFFMAN, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

Respondent No. 1 appeals an administrative law judge's  
opinion filed August 4, 2010. The administrative law judge  
found that the claimant proved she sustained a compensable  
injury in the form of right carpal tunnel syndrome. After

reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion. The Full Commission finds that the claimant did not prove by a preponderance of the evidence that she sustained a compensable right carpal tunnel syndrome injury.

I. HISTORY

The testimony of Maria Isabel Serrano, age 52, indicated that she began working for the respondent-employer in about April 2002. Ms. Serrano described her work as "Decoupage. We were folding cards; we were making tags, that kind of stuff. We were doing different things." The claimant testified that she would "crinkle" with her hands: "They put a box that big and you have to take it and you have to do like this (indicating) and you have to do this and you have to weigh it, and you take off the tape and enclose it. Sometimes they would give us bags with stickers and we would have to put the sticker on it." The claimant testified that she was moving her fingers "all the time" and "we had to work fast."

It was stipulated that an employment relationship existed between the claimant and Respondent No. 1, Arch Insurance Company, on February 20, 2007. It was stipulated

that the claimant sustained a compensable injury to her right hand on February 20, 2007, and that the compensable injury was "in the form of trigger finger syndrome involving the index and middle finger." An LPN noted on February 21, 2007, "Patient reports 2<sup>nd</sup> & 3<sup>rd</sup> fingers on right hand locking up after working a shift on a repetitive line. Also complains of pain in palm of hand. Symptoms began yesterday." The diagnosis was "Flexor tendonitis right 2<sup>nd</sup> and 3<sup>rd</sup> fingers." It was noted on February 21, 2007, "The involved fingers are splinted. She should have no use of the right hand for the next 2 weeks, recheck in 2 weeks." Dr. R. B. Wilson Jr. reported on February 21, 2007 that he had diagnosed "Flexor tendonitis right 2<sup>nd</sup> and 3<sup>rd</sup> fingers."

Dr. Peter Tang examined the claimant on March 8, 2007:

Ms. Serrano is a 48-year-old, right-hand dominant female who presents with right index and middle finger triggers, which started on 2/20/07. She has no numbness. Pain at the base of the finger, and when she closes the hand, she has difficulty opening it back up. She had no prior problems with these fingers....she has worked at DMD Industries and used her hand quite a bit at work for the last five years....

PHYSICAL EXAMINATION: Right hand: She is tender at the A1 pulley of the right index and middle fingers, more at the middle finger. She has good finger extension, and when she makes a fist now she definitely locks down. You can feel the

clicking at the A1 pulley. Two-point discrimination is 6mm throughout.

X-rays of her right hand, three views, show no soft tissue calcification, good joint spacing, and no obvious bony involvement.

Dr. Tang's impression was "Right index and middle finger triggers. This has been going on for about two weeks now. She has failed conservative treatment with splinting, which she feels just makes them stiff, and antiinflammatory, which bothers her stomach....We talked about possibly trying one Cortisone injection, since it happed (sic) two weeks ago, and talked about surgery. After a long discussion, she opted to try the injection first to see if it works, with the understanding that if it does not she may need to proceed with surgery." Dr. Tang performed an injection and noted, "We will limit her repetitive use of this hand at work." Dr. Tang took the claimant off work until March 12, 2007.

Dr. Tang's impression on April 5, 2007 was "Persistent right index and middle finger triggers after one injection....At this time, after the long discussion, she would like to try one more injection....Her main restriction is to limit repetitive use of the hand, and we will recheck with her in one month." Dr. Tang's impression on May 3,

2007 was "Recurrent right index and middle fingers failing conservative treatment with Cortisone injection." Dr. Tang performed surgery on June 13, 2007: "1. Right index finger trigger release. 2. Right middle finger trigger release." The pre- and post-operative diagnosis was "1. Right index finger trigger. 2. Right middle finger trigger." Dr. Tang reported on June 26, 2007, "Ms. Serrano is status post right index and middle finger trigger releases on 6/13/07. She has been doing well....She is released to one-handed duty starting tomorrow, and we will follow up with her in two weeks."

The claimant testified that she returned to restricted work: "I would stick a lot of stickers; I would decoupage with [my left] hand....I would just hold the bag in place and I would stick it and do this like this, and stick it and do like this." Dr. Tang subsequently arranged occupational therapy for the claimant, and the claimant followed up with Dr. Tang on August 21, 2007:

Ms. Serrano is status post right index and middle finger trigger releases on 06/13/07. She is slowly getting better. The fingers do not lock now. She notes a little swelling in the morning that gets better as the day goes on. The pain is not as bad in the morning, but she uses it more. She still notes some pain, not because of

triggering, but due to overuse. No numbness or tingling.

PHYSICAL EXAMINATION: Right hand: She has good range of motion of her fingers. She is able to make a tight fist. The scars are barely visible; there is still some residual thickness underneath them. No triggering with her motion. A little tenderness with deep palpation of that area. No redness or signs of infection. No signs of RSD. Sensation intact to light touch, distally.

IMPRESSION: Right index and middle finger trigger releases, ten weeks out. She is slowly getting better. Motion is good. The swelling and the pain are getting better. I think we just need to give her a little bit more time....We will go ahead and have her do two hours of using both hands during the morning shift, two hours in the afternoon, and to be on one-handed duty during the rest of the eight-hour day....

The claimant described her restricted work as "Two hours of normal work, two hours of rest." There was no additional medical treatment of record for the claimant after August 21, 2007 until she was examined by Dr. C. Noel Henley on October 17, 2007:

This patient is a 49 year old Hispanic woman who underwent A-1 pulley releases on 06/13/07. She complains of pain in both hands. She says that she's developing problems in all of her fingers with numbness/tingling in both hands. She says that she has index finger and middle finger pain on the right side. The fingers do not lock any more. She had lots of pain at the base of the index finger and middle finger.

My office has called for approval of treatment of both hands and the multitude of problems she is

now complaining of. We've left a message but this has not been approved yet.

I explained to Ms. Serrano that we need to make sure that she's recovered from this previous surgery before we plunge into work for multiple other problems yet.

She is on restricted duty, working some of the day using her hand and then resting it other parts of the day. She says that she's supposed to be on one handed duty but her bosses are making her use both of her hands....

The right hand is well vascularized with brisk capillary refill in all five digits. She has multiple spots of tenderness over the entire hand, including multiple PIP joints, CMP joints, the volar base of P1 of the middle finger and index finger. The A-1 pulleys are a little bit tender to her. She has full range of motion of the hand and full flexion and full extension with no crepitus. There are some small masses present at the A-1 pulleys at the index and middle fingers. Two point discrimination measures 5 mm. radially and ulnarly in the index finger and middle finger. There is no clicking present. There is no locking. Grip strength is equal at 20 pounds bilaterally. I cannot even see the scars over the patient's fingers....

Xray examination of the hand shows no evidence of joint narrowing or degenerative changes.

Dr. Henley assessed "Pain status post A-1 pulley releases right index and middle fingers....I have recommended steroid injection into the flexor tendon sheaths on the index and middle fingers. Under sterile preparation, this is accomplished using a mixture of Lidocaine and

steroid. She tolerated the procedure well, and in fact, felt a small pop and something release at the index finger A-1 pulley....I think the next step, if she is not improved, is to do a functional capacity evaluation and return to whatever duty that evaluation deems her capable of. I'm not sure why she's hurting. She seems to be greatly concerned about the amount of work she'll be required to do. We'll try the injection, keep her on her current work restriction and see her back in four weeks for re-evaluation. Whether she is improved or not, we will most likely send her for functional capacity evaluation. I see no reason to further restrict her after that time. We will wait to see how she recovers from this surgery before we decide to treat her other problems yet."

Dr. Henley signed a Certificate To Return To Work on October 17, 2007, indicating that the claimant was able to return to work on October 18, 2007 with the following restrictions: "two hours of using both hands during the morning and two hours in the afternoon and to be one handed duty the rest of the eight hour shift."

The claimant testified that her job duties changed in November 2007: "I changed to a line where I was putting

baskets to tape, but I didn't just do that. They gave me a little knife and I had to open some boxes that were really hard sometimes, take the product out and set it up." The claimant testified that this work activity was easier on her hands and "I could take my time to get the boxes at my pace." However, the claimant testified that her hands "would hurt from the wrist down."

Dr. Henley reported on November 14, 2007:

Maria returns for follow-up after a steroid injection in the right index and middle fingers. She says the shot helped her and resolved her symptoms 50% of the way. She has changed jobs at the company and is currently much improved also due to this job switch. She says, "I can't do that other job where I use my fingers." Her sister-in-law is interpreting during the examination today. She says her other symptomatic fingers have improved with this new job as well. Her examination is completely unchanged. She appears to perseverate (sic) less about her symptoms. However, she still seems unclear about how Worker's Compensation patient care operates. I will return her to work with no restrictions. I will see her back in four weeks. She may still need a functional capacity evaluation if she is hesitant in any way to do the job that she is doing right now. I feel strongly that she has improved a great deal with the new job role that she has and this further reinforces my opinion that a functional capacity evaluation may be the right thing for her.

Dr. Henley signed a Certificate returning the claimant to work on November 14, 2007 with "No restrictions."

The parties have stipulated that "on all relevant dates between January 1, 2007 and December 31, 2007, the relationship of employee-employer-carrier existed between the claimant, Westrim, Inc., and Arch Insurance Company." The parties have stipulated that "on all relevant dates after January 1, 2008, the relationship of employee-employer-carrier existed between the claimant, Westrim, Inc., and Travelers Insurance Company."

Dr. Henley reported on January 15, 2008:

Maria returns for follow up of pain in the index and middle fingers. She says her pain is the same....After the injection she did get better for two months, but now her pain has returned. She is doing her new job, which helps, but sometimes when she has to do heavier work, she has some increased pain and some tingling. She says in the morning she has to exercise her fingers to increase her range of motion.

**PHYSICAL EXAMINATION:** Her examination today is virtually unchanged. She has diffuse tenderness to palpation over the A1 pulleys on the palmar side of the hand and some mild tenderness at the MCP joints of the index and middle fingers.

**ASSESSMENT:** Continued pain, status post A1 pulley release surgery.

**PLAN:** I do not have any surgery to offer her at this point. I do not think more injections will help and they could be detrimental to the health of her tendons. I do not think she needs further surgery on these two fingers. I am returning her to work with no restrictions. I think she has reached maximum medical improvement and she needs a Functional Capacity Evaluation to determine what she can do at work and to assess how the fingers are limiting her. She apparently does have some

complaints in the other fingers that are separate from her previously approved complaints and problems. She says she may come to see me using her own insurance in the future if this continues to be a problem. I do not anticipate any permanent partial impairment rating as her range of motion is almost full.

The record includes an exhibit identified as a Personnel File document dated March 17, 2008:

Claimant was just released from another w/c injury for right trigger finger release. She began c/o pain in her other fingers to the provider and he was only treating her for the affected fingers (r. index and middle fingers). She is now in a different department that has less repetitions and she pushes boxes through a tape machine since June 2007. She is c/o pain in her hands and wrists. She is not in a "rapid and repetitive" position per her employer....

EE has been moved from the production area while she was on light duty from the previous injury to a less repetitious job position. She is in the shipping department....

This is not a compensible (sic) injury for chronic pain as the claimant is not in a "rapid & repetitious" job.

It was stipulated that there was "no dispute over the payment of medical expenses incurred through at least March 17, 2008." The parties have stipulated that "all expenses incurred for these services have been paid by Arch Insurance Company."

The record indicates that the claimant cancelled a Functional Capacity Evaluation that was scheduled for April 9, 2008. The claimant testified that she did not work after May 16, 2008, because "The factory was moving to California and the ones that closed the line where I was, my co-workers went to production and to do other jobs. I told the manager - and later, I don't know what he is - that I did not want to go to production because it would hurt my hands too much." The claimant testified that she did not go to work for another employer.

Dr. James E. Kelly, III corresponded with the claimant's attorney on May 23, 2008:

Thank you very much for referring Maria Serrano for consultation. As you are aware, this is a 49 year old BMD employee who back in February of '07 developed trigger fingers in the right 2<sup>nd</sup> and 3<sup>rd</sup> fingers. She was initially seen by Dr. Tang who completed trigger releases on her on June 13<sup>th</sup>, 2007. She then had injections by Dr. Tang for pain in the fingers and was started on therapy. Of course, Dr. Tang has retired and transferred her care to Dr. Henley and Dr. Henley had seen her in November of '07. My understanding is that he had discharged her to regular work duties at that point in time. She is complaining still of pain in the right hand. She states this gets electric-type tingling in the fingers. She also is starting to get some locking of the 4<sup>th</sup> ray. She also claims that she is starting to get some same symptoms in the left hand in the 2<sup>nd</sup> and 3<sup>rd</sup> fingers. The tingling is almost electric in nature. She states that she will get it when she

opens and closes her hand when she is using it and she gets some of these affects also at night. She denies ever having trauma to her upper extremity.

On examining her she certainly has some early signs of triggering in the 4<sup>th</sup> ray on the right hand. She has a positive Tinel's, Phalen's and compression tests also in the right hand. She had no high Tinel's. Costal compression and cervical examination were negative. Two point discrimination, 7 mms in the median distribution, 3 mms in the ulnar distribution of the right hand.

I certainly do think that she has carpal tunnel syndrome and also is developing trigger finger in the 4<sup>th</sup> ray. I would like to order EMG-NCVs on her and then I will see her back once these have been completed. A decision will be made at that point in time whether a carpal tunnel release will be completed with the trigger release or if we would treat the carpal tunnel syndrome conservatively and do only the trigger release. We will, of course, make that decision when she returns....

A pre-hearing order was filed on June 10, 2008. The claimant contended that "on February 2007 she developed an injury to her right/hand fingers from rapid and repetitive work counting paper." Respondent No. 1 contended that the claimant had been provided all appropriate benefits to which she was entitled and that it had paid the claimant's benefits related to the claim. Respondent No. 1 contended that the claimant "reached the end of her healing period with a zero percent impairment rating as of January 15, 2008. A Functional Capacity Assessment was set for April 9,

2008, but the claimant cancelled and did not attend. The respondents are unaware of any additional benefits that are due and owing on this case."

The claimant and Respondent No. 1 eventually agreed to litigate the following issues:

1. Whether the claimant sustained a compensable injury to her right hand, other than trigger finger syndrome involving the index and middle finger.
2. The claimant's entitlement to additional medical services.

Electrodiagnostic Studies were done on June 13, 2008:

The patient is a 49 year old female with complaints of numbness and tingling in both hands, more on the right. Most of her symptoms are felt in her thumb, index, middle and ring fingers. These symptoms have been ongoing for several months. No history of trauma is reported. She is right hand dominant. She is not working at the moment. She says that her job requires repetitive use of both hands. She also reports weakness in her grip. She does not report having cervical pain. Cervical motion does not seem to reproduce her upper extremity symptoms. She reports increased symptoms at night. The patient denies use of a pacemaker and denies diabetes. She is accompanied by her daughter who was interpreter today.

**Summary of Findings:**

NCV

Motor Nerves: Bilateral median and ulnar nerves were tested for comparison. There is moderate slowing of the right median nerve across the wrist.

Sensory Nerves: Bilateral median, radial and ulnar nerves were tested for comparison. There is very

mild slowing of the right median nerve across the wrist to D4.

**Conclusion:**

1. There is a mild to moderate compromise of the right median nerve across the wrist involving the motor and sensory components consistent with demyelination.
2. This study does not rule out a radiculopathy.

Dr. Kelly noted on July 18, 2008, "Ms. Serrano presents to the office today in follow up for her right hand. She, of course, underwent EMG-NCV studies, which were positive for carpal tunnel syndrome. This was compatible with her physical findings and there are no findings of any radiculopathy or other peripheral nerve compression problems. I therefore have recommended that she have a right carpal tunnel release and, of course, she has the triggering in the right 4<sup>th</sup> finger so we can do the A1 pulley release at the same time...."

A hearing was held on July 28, 2008. The claimant testified that she had not undergone surgery recommended by Dr. Kelly. An administrative law judge filed an opinion on October 8, 2008. The administrative law judge found, among other things, that the claimant sustained a compensable right carpal tunnel syndrome injury. Respondent No. 1 appealed to the Full Commission.

In the meantime, Dr. Ruben Tejada saw the claimant on January 13, 2009 and noted, "She states she needs medication for her pain. She states she is scheduled to have carpal tunnel surgery soon." Dr. Tejada assessed Prehypertension, Obesity, Osteoarthritis, and Carpal Tunnel Syndrome.

The Full Commission filed an order on June 29, 2009 and vacated the administrative law judge's October 8, 2008 opinion. The Full Commission stated in part, "The parties discussed at hearing that a new respondent-carrier had come on the risk in March 2008. Since a new carrier may be responsible for the claimant's alleged compensable injuries, this new carrier is a necessary party for a hearing involving potential liability for the claimant's condition. Therefore, the Full Commission vacates the administrative law judge's decision, and we remand for additional proceedings and adjudication with all necessary parties involved."

Dr. Tejada noted on July 1, 2009, "Pt complains of worsening pain of her carpal T syndrome. She states that in her R arm it is hurting all the way up her arm to the neck. She couldn't sleep last pm due to the pain and her rt neck muscle feels tense....She is going to have surgery when her

insurance approves it. She needs to wear wrist splints and no repetitive motion to the wrists."

Another pre-hearing order was filed on March 3, 2010. The claimant contended, "On February 2007 claimant developed an injury to her fingers on both of her hands from rapid and repetitive work counting paper."

Respondent No. 1 contended that the claimant "did not sustain a compensable injury in the form of right carpal tunnel syndrome during 2007. In the alternative, Respondent No. 1 contends that the claimant's employment activities, after December 31, 2007, contributed or aggravated the claimant's right carpal tunnel syndrome and Respondent No. 2 should be liable for a portion of any benefits awarded."

Respondent No. 2, Travelers, contended that Respondent No. 1 was "responsible for any and all problems alleged by the claimant, which problems had an onset in 2007 at which time Arch Insurance Company was the carrier for the respondent-employer."

The parties eventually agreed to litigate the following issues:

1. Whether the claimant sustained a non-specific incident injury to her right hand in the form of of carpal tunnel syndrome.

2. The claimant's entitlement to medical services for her right carpal tunnel syndrome.
3. Liability for such benefits between the respondent-carriers.

The claimant followed up with Dr. Tejada on March 8, 2010: "She is still having problems with carpal tunnel in the right hand....She might need another nerve conduction study and referral to see an orthopaedic surgeon for further evaluation of this pain. She is still having problems in the distribution of the median nerve of the right hand and we will see her back in a month." Dr. Tejada assessed Prehypertension, Obesity, Prediabetes, Carpal tunnel syndrome, and Malaise.

The claimant was deposed on April 30, 2010. The attorney for Respondent No. 1 questioned the claimant:

Q. I notice you have braces on your hands. How long have you been wearing them?

A. Since I went to Dr. Tejada. Since I commented to him, you know, when I went for my physical, I commented about my hands. He told me to use this so that I wouldn't have a lot of movement in my wrists, and it would also help to reduce the pain. What's more, I sleep with them.

Q. Do you wear them 24 hours a day?

A. In my house when I have to do something, I do take them off, but that's very little, and I do it very slowly.

Q. Tell me what kind of complaints or problems, we'll start with your right hand and wrist first, tell me about that first, what kind of complaints or problems do you have with your right hand and wrist?

A. On the right hand I wake up in the mornings with my fingers, my hand and wrist, swollen. This finger will droop (indicating).

Q. And you're pointing to your ring finger?

A. Uh-huh.

Q. Is that a yes?

A. Yes, yes, I'm sorry, yes. And my wrist hurts all the way up to here (indicating) in my elbow. Lately, it's been hurting clear up to my shoulder. I can't lift my hand very much up in the air. At night I can't sleep on this side.

Q. Are you pointing to your right side?

A. On the right side. I think that's all of the pain.

Q. What can't you sleep on your right side at night?

A. I feel like the weight of my body hurts my arm....

A hearing was held on May 10, 2010. At that time, the parties agreed to litigate the claimant's "entitlement to benefits for her right hand only." The claimant testified that the symptoms in her right hand had not changed: "It hurts my wrist and my fingers, and the pain runs all the way to my neck, right here (indicating), my shoulder."

An administrative law judge filed an opinion on August 4, 2010. The administrative law judge found, among other things, that the claimant proved she sustained a compensable right carpal tunnel syndrome injury. Respondent No. 1 appeals to the Full Commission.

## II. ADJUDICATION

The parties have agreed to litigate the issue, "1. Whether the claimant sustained a non-specific incident injury to her right hand in the form of carpal tunnel syndrome." Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4) (Repl. 2002), provides:

- (A) "Compensable injury" means:
  - (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 compensable injury falling within this definition[.] ...

Because carpal tunnel syndrome is recognized as a gradual-onset injury, it is not necessary that an employee prove her alleged compensable carpal tunnel syndrome injury was caused by rapid repetitive motion. *Kildow v. Baldwin Piano & Organ*, 344 Ark. 296, 40 S.W.3d 760 (2001). A compensable injury must be established by medical evidence

supported by objective findings. Ark. Code Ann. §11-9-102(4) (D) (Repl. 2002).

The employee must prove by a preponderance of the evidence that she sustained a compensable injury, and 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)) (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).

An administrative law judge found in the present matter, "6. During the period between August 21, 2007 and October 17, 2007, the claimant sustained a compensable injury to her right wrist/hand in the form of carpal tunnel syndrome." The Full Commission does not affirm this finding. The claimant began working for the respondent-employer in April 2002, performing "Decoupage" and other work with her hands and fingers. It was stipulated that the claimant sustained a compensable "trigger finger syndrome" injury on February 20, 2007. Respondent No. 1 paid for medical treatment related to this compensable injury. Dr. Tang began treating the claimant on March 8, 2007, but he

noted no symptoms which he attributed to right carpal tunnel syndrome and did not diagnose such a condition. Dr. Tang performed surgical releases of the claimant's right index finger and right middle finger on June 13, 2007. Dr. Tang released the claimant to one-handed work duty beginning June 27, 2007.

The claimant testified that she returned to restricted work, performing "decoupage" with her left hand. Dr. Tang followed up with the claimant on August 21, 2007 and released the claimant to work "two hours of using both hands during the morning shift, two hours in the afternoon, and to be on one-handed duty during the rest of the eight-hour day." The evidence before the Commission does not demonstrate that the claimant developed right carpal tunnel syndrome as a result of working for the respondent-employer on and after August 21, 2007. Dr. Henley began treating the claimant on October 17, 2007 and noted that the claimant complained of pain, numbness, and tingling in both hands. However, Dr. Henley assessed pain related to the claimant's trigger finger release surgeries and did not diagnose carpal tunnel syndrome. Dr. Henley kept the claimant on restricted work duties. The preponderance of evidence before the

Commission does not demonstrate that the claimant developed right carpal tunnel syndrome arising out of and in the course of employment beginning August 21, 2007 and continuing through October 17, 2007. There is no medical evidence before the Commission demonstrating that the claimant sought any additional medical treatment, including treatment related to carpal tunnel syndrome, beginning August 21, 2007 and continuing through October 17, 2007.

The claimant testified that her job duties changed in November 2007. The claimant testified that her new job duties were less stressful to her hands but that she felt pain in her wrists. Dr. Henley examined the claimant on November 14, 2007 and reported that an injection had improved the claimant's symptoms. Dr. Henley released the claimant to return to work with no restrictions. Dr. Henley did not report that the claimant was suffering from symptoms related to right carpal tunnel syndrome.

The administrative law judge found that the claimant did not prove she "sustained a compensable injury to her right hand, in the form of carpal tunnel syndrome, on and after January 1, 2008." The claimant does not appeal this finding. Dr. Henley opined on January 15, 2008 that the

claimant had reached maximum medical improvement. Dr. Henley did not report any symptoms that he believed were related to carpal tunnel syndrome, and he did not diagnose carpal tunnel syndrome. Respondent No. 1 paid for the claimant's medical treatment through March 17, 2008.

The claimant testified that she did not work for the respondents or any other employer after May 16, 2008. The claimant's attorney referred the claimant for treatment with Dr. Kelly beginning May 23, 2008. Dr. Kelly essentially diagnosed carpal tunnel syndrome and arranged additional diagnostic testing. An electrodiagnostic examination on June 13, 2008 revealed findings including "mild to moderate compromise of the right median nerve across the wrist involving the motor and sensory components consistent with demyelination." Dr. Kelly thereafter planned additional surgery including a right carpal tunnel release. Although the claimant did not work for the respondents after May 16, 2008, Dr. Tejada reported beginning in January 2009 that the claimant's symptoms continued to worsen. Dr. Tejada did not opine that the claimant's symptoms were related to her employment with the respondents, and his assessment included pre-hypertension and obesity in addition to carpal tunnel

syndrome. The claimant was deposed in April 2010. Although the claimant had not worked for the respondents or another employer for nearly two years, the claimant testified that she felt pain in her right arm from her wrist to her shoulder. The Arkansas Court of Appeals has held that conjecture and speculation, however plausible, cannot supply the place of proof. *Dena Const. Co. v. Herndon*, 264 Ark. 791, 575 S.W.2d 155 (1979). Based on the probative evidence in the present matter, the administrative law judge's finding that the claimant sustained compensable right carpal tunnel syndrome "between August 21, 2007 and October 17, 2007" is not plausible. It would require sheer speculation and conjecture for the Commission to find that the instant claimant sustained a compensable right carpal tunnel syndrome condition.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove by a preponderance of the evidence that she sustained a compensable injury. The claimant did not prove that she sustained a right carpal tunnel syndrome injury which caused physical harm to the body, and the claimant did not prove she sustained a right carpal tunnel syndrome injury which

arose out of and in the course of employment. The claimant did not prove by a preponderance of the evidence that the alleged compensable injury was the major cause of her disability or need for treatment. The claimant therefore did not prove that Dr. Kelly's treatment was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a). The Full Commission reverses the administrative law judge's finding that the claimant proved she sustained a compensable right carpal tunnel injury, and this claim 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. After a de novo review of the record, I find that the claimant sustained a compensable right carpal tunnel syndrome injury. As its reasoning for denying this claim, the majority states:

"It would require sheer speculation and conjecture for the Commission to find that the instant claimant sustained a compensable right carpal tunnel syndrome condition." I disagree. In my opinion, the medical evidence of record, the claimant's testimony as to her job duties, and plain common sense require a finding that the claimant sustained a compensable carpal tunnel syndrome injury.

For the entire period of the claimant's initial employment with the respondent from 2002 until some time in November of 2007, the claimant's job required her to perform several different types of work, "crinkling", "packing paper", "tagging", and "decoupage". All of these jobs involved grasping, picking up, moving, and otherwise manipulating pieces and sheets of paper, and then packing them into boxes or bags. These hand-intensive activities were continuously performed in a rapid repetitive manner, during the claimant's entire eight-hour shift. The record shows that, in February of 2007, the claimant suffered a compensable cumulative trauma injury to the first two fingers of her right hand, as a result of her rapid and repetitive employment activities for Westrim, Inc. Respondent-carrier #1, Arch Insurance Company, voluntarily

accepted liability for and has provided the claimant with appropriate benefits for these compensable injuries.

As a result of her right hand difficulties, the claimant was restricted from performing any employment activities with her right hand by Dr. Robert Wilson, on February 21, 2007. This restriction was subsequently modified by Dr. Tang on March 8, 2007. At that time, Dr. Tang only directed that the claimant limit the repetitive use of her right hand. Following the claimant's surgery for her right trigger-finger syndrome, on June 7, 2007, Dr. Tang returned the claimant's medical restrictions to no use of her right hand. On August 21, 2007, Dr. Tang released the claimant to full or unrestricted use of her right hand, but for only four hours during her eight-hour shift, with two hours during the first half of her shift and two hours during the second half.

In his initial report of May 23, 2008, Dr. Kelly diagnosed the claimant's current right hand difficulties as carpal tunnel syndrome and a developing trigger-finger syndrome that involved the third or ring finger. He did note that the claimant's index and middle finger were no longer locking or triggering. At that time, Dr. Kelly

ordered a nerve conduction velocity study of the median nerves in the claimant's two upper extremities. This study was performed by Dr. Keith Bolyard of the River Valley Musculoskeletal Center. In his report on this study, dated June 13, 2008, Dr. Bolyard noted the presence of abnormalities that involved the claimant's right median nerve in the area of her wrist, which would be compatible with the existence of right carpal tunnel syndrome.

In his report of July 18, 2008, Dr. Kelly observed that the claimant's nerve conduction studies confirmed his initial diagnosis of carpal tunnel syndrome. At that time, he recommended surgical intervention, in the form of a right carpal tunnel release. According to the claimant's testimony, she has been financially unable to obtain this recommended treatment. She has had follow-up care for her continuing right hand complaints and some degree of treatment, in the form of pain medication, from Dr. Robin Tejada, a family physician.

Neither party has offered any expert medical opinion on the cause of the claimant's right carpal tunnel syndrome. However, expert medical opinion is not essential to establish causation, in every case. The claimant need

only show that the injury is logically attributable to the employment-related activity, that the injury followed within a reasonable period of time after such activity, and that there is no other probable cause for the injury. Eddington v. City Electric Company, 237 Ark. 804, 376 S.W.2d 550 (1964).

The claimant's testimony, which is supported by the October 17, 2007 report of Dr. Henley, shows that symptoms indicative of the onset of right carpal tunnel syndrome (pain, numbness, and tingling in her wrist, hand, and fingers) first appeared after the claimant's surgery for the compensable trigger-finger syndrome and after she was released to resume the use of her right hand to perform the employment-related activities of "crinkling", "packing", "tagging", and "decoupage". Even being performed for only two hours at a time, for a total of four hours out of an eight-hour shift, such continuous, rapid, and repetitive use of the claimant's right hand could logically result in the development of carpal tunnel syndrome. This is particularly true when these hand-intensive activities were suddenly resumed after six months of extremely limited use of this portion of the claimant's body.

Further, the evidence fails to show the occurrence of any trauma or injury to the claimant's right wrist, within a reasonable time prior to the onset of her carpal tunnel symptoms. The evidence also fails to show that the claimant had any systemic problems, such as pregnancy or diabetes, that could precipitate carpal tunnel syndrome, at the time of the onset of her carpal tunnel syndrome symptoms. Finally, there is no evidence that the claimant engaged in any non-employment-related hand-intensive activities around the time of the onset of her carpal tunnel syndrome symptoms. Thus, the evidence fails to show any other reasonable cause for the claimant's right carpal tunnel syndrome.

Following the rule announced by the Supreme Court in Eddington, Id. and Hall v. Pittman Construction Company, 235 Ark. 104, 357 S.W.2d 263 (1962), I find that the claimant has proven the existence of a causal relationship between her employment activities for Westrim, Inc., in August, September, and October of 2007, and her right carpal tunnel syndrome. The greater weight of the evidence shows that her employment activities for Westrim, Inc. could logically produce such a condition, that the condition

occurred within a reasonable period of time following these employment-related activities, and that there is no other equally plausible cause for such a condition.

For the aforementioned reasons I must respectfully dissent.

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PHILIP A. HOOD, Commissioner