

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

AWCC FILE No H104099

PATRICIA DAVIS, EMPLOYEE	CLAIMANT
STANDING CHAPTER 13 TRUSTEE, EMPLOYER	RESPONDENT
ALL AMERICA FINANCIAL ALLIANCE, CARRIER	RESPONDENT
HANOVER INSURANCE GROUP, TPA	RESPONDENT

OPINION FILED 28 DECEMBER 2023

Heard before Arkansas Workers' Compensation Commission (AWCC) Administrative Law Judge JayO. Howe on 4 October 2023 in Little Rock, Pulaski County, Arkansas.

Ms. Sheila F. Campbell, Attorney-at-Law of North Little Rock, Arkansas, appeared for the claimant.

Mr. James A. Arnold, II, Attorney-at-Law of Fort Smith, Arkansas, appeared for the respondents.

I. STATEMENT OF THE CASE

The above-captioned case was heard on 4 October 2023 in Little Rock, Arkansas, after the parties participated in a prehearing telephone conference on 18 April 2023. A subsequent Prehearing Order, admitted to the record without objection as Commission's Exhibit No 1, was entered on that same day. That Order stated the following ISSUES TO BE LITIGATED:

1. Whether the claimant suffered a compensable injury by way of bilateral carpal tunnel syndrome and cubital tunnel syndrome.
2. Whether the claimant is entitled to temporary total disability (TTD) from 30 June 2021 to 31 August 2021.
3. Whether the claimant is entitled to reasonable and necessary medical care and expenses associated with her claimed compensable injury.
4. Whether the claimant is entitled to a controverted attorney's fee.
5. All other issues are reserved.

The parties' CONTENTIONS, as set forth in their prehearing questionnaire responses, were incorporated into the Prehearing Order. The claimant contends:

1. That she sustained a compensable injury of bilateral carpal tunnel syndrome and cubital tunnel syndrome in the course and scope of her employment, with those gradual onset injuries occurring by 8 March 2021.
2. That she is entitled to TTD between 30 June 2021 and 31 August 2021.
3. That she is entitled to medical benefits in the form of past surgeries, rehabilitation, expenses, and associated mileage.
4. That she is entitled to an attorney's fee.
5. That she is entitled to permanent partial disability.¹

The respondents contend:

1. That the claimant did not sustain a compensable injury to either upper extremity.
2. They also contend that if the claimant is found to be entitled to TTD, then they are entitled to an offset against the related benefits owed for the payments she received under an employee-sponsored short-term disability plan, but for the first week (which was not covered by the plan) of her being off work for and after her surgeries.²

That Order also set forth the following STIPULATIONS:

1. The AWCC has jurisdiction over this claim.
2. An employee/employer/carrier relationship existed on 8 March 2021, and the claimant was entitled to the maximum compensation rates at that time.
3. The respondents have controverted this claim in its entirety.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the record as a whole and having heard testimony from the witnesses, observing their demeanor, I make the following findings of fact and conclusions of law under ACA § 11-9-704:

¹ While reviewing the Prehearing Order at the beginning of the hearing, the claimant indicated that she wished to reserve any litigation on permanent disability. A finding on permanent disability is, accordingly, not addressed in this Opinion. TR at 7.

² The claimant acknowledged that the respondents would be entitled to an offset in the event of a TTD entitlement finding. TR at 8-9.

1. The AWCC has jurisdiction over this claim.
2. The previously noted stipulations are accepted as fact.
3. The claimant failed to prove by a preponderance of evidence that she suffered a compensable injury.
4. The claimant is, therefore, not entitled to the benefits sought in this case.
5. Consistent with the above, the claimant's attorney is not entitled to a fee.

III. HEARING TESTIMONY

The claimant testified on her own behalf and was the hearing's only witness.

Direct Examination

Patricia Davis is a fifty-three-year-old female who worked for the respondents for twenty-six years. She worked as a case manager for the last five years or so of her employment with the respondents. She said that her job duties included communicating with debtors, creditors, and attorneys, managing check processing and funds distribution, and coordinating with insurance companies. TR at 10-11. She performed data entry, ran monthly reports, and assisted other departments with questions around plan distributions.

Ms. Davis testified that she began having problems with her hands in November of 2020, before making any mention of a potential workers' compensation claim. She became concerned when she noticed a "knot" or "growth" on the back of her right³ hand. TR at 12-13. According to Ms. Davis, she initiated her claim in March of 2021 after seeing a doctor about her hand, and "[i]t's been happening since then." TR at 14.

The claimant said that she followed the respondents' claim protocol and "immediately" presented to Concentra. She testified that she was then referred to an orthopaedic provider whose name she did not remember. TR at 15. Ms. Davis testified that she received no treatment from the provider and was returned to work without any restrictions. The claimant

³ The claimant is right-hand-dominant. *See* Cl. Ex. № 1 at 11.

did not produce any clinic notes from those provider visits, but only a Return to Work note from Dr. Mark Peterson dated 8 March 2021. *See* Cl. Ex. № 1.

According to the claimant, she continued to work as usual and without restrictions until she took time off for surgery with a physician she sought on her own. TR at 16. She testified that she underwent surgery on her right wrist with Dr. David Rhodes on 30 June 2021. *See* Cl. Ex. № 1 at 2-3. Ms. Davis said that she was off work for two and a half or three and a half weeks before returning to work. TR at 17.

Ms. Davis said that she spoke with her employers about accommodations before having surgery and that they purchased an ergonomic mouse for her right hand. TR at 18. After returning to work, she testified that she was having or had been having problems with her left hand also. Ms. Davis explained that her left hand problems were noted in her initial visit with Dr. Rhodes, but she could not schedule both surgeries at the same time for lack of a caregiver during post-operative healing. So, she went back to Dr. Rhodes for the second surgery on 16 August 2021. TR at 19; *see also* Cl. Ex. № 1 at 4-5.

The claimant returned to work after the second surgery, but she continued to experience problems. “So I kept going back and forth to my doctor to ask was it normal and he re-evaluated some more and I, eventually, had to start doing steroid shots.” TR at 19. She testified that the injections were administered in both wrists and that she continued to work during that time. Ms. Davis said that she still experienced nighttime swelling that made it difficult to rest. TR at 20.

Ms. Davis stated that she wore compression sleeves or guards at different times before and after her surgeries. She did not seek accommodations related to the sleeves, but received the earlier-mentioned ergonomic mouse when she requested the same from her supervisor. TR at 23. The claimant testified that she was still experiencing trouble with her hands when she separated from her employment on 11 August 2022.

The claimant continued to experience nighttime swelling after surgery and sometimes had to call in late because the pain medication she was prescribed made her sleepy. TR at 24. She has not worked since leaving the respondent's employment. Before leaving her job, she said that therapy assisted her ability to work, but that treatment was not paid for by her employer.

Ms. Davis stated that she received short-term disability benefits through her employer-sponsored plan from 30 June 2021 to 31 August 2021. That plan's benefits did not begin until after the first week off work. TR at 25. According to her testimony, the claimant continues to experience pain and swelling: "If I have too much activity, it swells. So anytime you're doing anything with your hands, I'm still dealing with the same issues, gonna swell." *Id.* She thought she last saw Dr. Rhodes around the beginning of 2022, but her counsel noted that the records reflect a last visit in July of 2022. TR at 26. Dr. Rhodes prescribed medication and offered additional steroid injections as needed.

Cross Examination

Ms. Davis acknowledged that she did attend work for some time between the two surgeries. TR at 28. And she confirmed that her employer's short-term disability benefits covered all of her time off, but for the one week of her own leave time required by the policy. The claimant also acknowledged "significant other medical problems and conditions" beyond the problems noted in the records she submitted as evidence. TR at 29.

Other problems include cervical and low-back issues, and she did not deny past complaints of tingling and numbness in her arms. Past diagnostic efforts include more than one nerve conduction study over the years. TR at 30.

The claimant confirmed that after working for about twenty years as a Modification Analyst, she did not want to be promoted to the Case Manager role. Ms. Davis took issue with her deposition testimony that indicated her previous role as having more repetitive job

functions than her most recent. TR at 31. After discussing the notion that Ms. Davis did not complain about discomfort until after receiving the promotion she did not want, the questioning continued:

Q: The job that you did, whether Modification Analyst or Case Manager, did it involve the use of both arms equally?

A: Pretty much you're on a computer. Yes, I would say computer, calculator, back and forth.

Q: You're right-handed?

A: I'm right-handed, yes.

Q: Okay. Yet, you've developed the elbow problem in your non-dominant arm?

A: I answer the phone with the left hand.

Q: Okay. And that's the arm that you, at least according to the medical records, had all the problems with, your left shoulder?

A: I don't – like I said, I don't know what you're asking.

Q: Okay. Well, do you have an explanation for why you've got the cubital tunnel syndrome problem in your left arm and not your right arm, if our job involved the use of both arms?

A: I don't have an explanation for it at all, 'cause I wasn't even aware of it. I didn't know what it was; so I can't tell you what built up to that, other than my day-to-day activities of going to work doing the same job that I was doing. So I don't know what the difference – you're saying was more on the right or the left. I can't answer that for you.

Q: Okay.

A: 'Cause I did the same thing every day; so I'm sorry. TR at 34-35.

The claimant testified that she was prescribed pain medication for her hands by Dr. Rhodes and that she continues to be prescribed the same medication. TR at 37. Her cross examination ended without any re-direct, and the claimant rested her case after brief remarks from both attorneys.

IV. MEDICAL EVIDENCE

Claimant's medical exhibits consisted of an off-work note dated 8 March 2021, records from Dr. Rhodes for dates of service between 25 May 2021 and 31 August 2021, and some physical therapy notes from between 26 October 2021 and 14 December 2021. See Cl. Ex. No 1. The off-work note is not accompanied by any clinic notes, physician observations, diagnostic efforts, or treatment plans. The first encounter note from Dr. Rhodes represents a preceding two years of numbness and tingling in her left upper extremity and noticing a mass on her right hand for six months. *Id.* at 11. According to the note, surgery for the right extremity was agreed to and planned that day. That surgery occurred on 30 June 2021.

According to the notes, Dr. Rhodes performed surgery on her left wrist on 16 August 2021. *Id.* at 4. Between those surgeries, she presented to Dr. Rhodes with a new complaint of right thumb pain and noticeable continued swelling over her right operative site. He diagnosed primary osteoarthritis and administered a steroid injection. *Id.* at 7-8.

The respondents provided medical notes from between 6 February 2012 and 17 April 2023. See Resp. Ex. No 1. Those notes represented many different office visits and three nerve conduction study reports.

On 20 April 2021 she saw Dr. David Black for right wrist pain complaints, which the note dates back to 22 December 2019. See Resp. Ex. No 1 at 49-54. Dr. Black assessed right carpal tunnel syndrome and osteoarthritis of the wrist. He referred her for a CT scan of the wrist and a nerve conduction study and anticipated her following up after those studies were complete. He released her back to work without restrictions. Consistent with her testimony, however, the claimant did not return to Dr. Black's care.

V. Post-hearing Briefing

The parties timely submitted briefs after the hearing. The claimant notes in her brief that she saw Dr. Peterson for a "work related injury" on 8 March 2021 and then had surgery at the end of June and the middle of August that same year. She states that her work included

data input and “making calculations” and concludes that her claim is compensable and that she is entitled to TTD, medical expenses, and an attorney’s fee.

The respondents argued in their brief, without conceding that she satisfied her burden on objective findings, that the claimant failed to prove by a preponderance of the evidence that her work duties were a major cause of her injury. They point to numerous other medical conditions and complaints that relate to or could relate to her upper extremity problems, including ongoing complaints about her upper extremities and multiple negative nerve conduction studies.

V. ADJUDICATION

The stipulations are outlined above and accepted as facts. It is settled that the Commission, with the benefit of being in the presence of a witness and observing his or her demeanor, determines a witness’ credibility and the appropriate weight to accord their statements. See *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 448, 990 S.W.2d 522 (1999). The Commission must sort through conflicting evidence and determine the true facts. In so doing, the Commission is not required to believe the testimony of the claimant or any witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). It is further settled that a party’s testimony is never considered uncontroverted. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994).

A. The Claimant Failed to Prove by a Preponderance of the Evidence That She Suffered a Compensable Injury.

The claimant contends that she suffered gradual onset injuries to her right and left upper extremities. The claimant bears the burden of proving that she suffered a compensable injury. ACA § 11-9-102(4). And she must prove by a preponderance of the evidence that the

compensable injury is the major cause of a disability or need for treatment. ACA § 11-9-102(4)(E)(ii). Major cause means more than fifty percent of the cause. ACA. § 11-9-102(14).

A gradual onset injury generally requires that the claimant meet her burden in proving that: (1) the injury arose out of the course and scope of employment; (2) the injury caused harm requiring medical services; (3) the injury was caused by rapid and repetitive motion; (4) the injury was a major cause of the disability or need for treatment; and (5) the injury was established by medical evidence supported by objective findings. *See Pulaski County Special School District v. Stewart*, 2010 Ark. App. 487 (2010). Our Supreme Court, however, has recognized that carpal tunnel syndrome is a gradual onset injury and a claimant need not prove that such an injury was caused by rapid repetitive motion. *See Kidlow v. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W.2d 190 (1998). She must still prove that (1) her carpal tunnel syndrome arose out of and in the course of her employment, (2) her injury caused harm that required medical attention or resulted in disability, and (3) the injury was the major cause of the disability or need for treatment. The claimant must offer medical evidence supported by objective findings establishing her injury. ACA § 11-9-102(4)(D). In *J. & G. Cabinets v. Hennington*, 269 Ark. 789, 600 S.W.2d 916 (1980), the Court explained that “arising out of” employment refers to the origin or cause of an accident and “in the course” employment refers to the time, place, and circumstances under which an injury occurred.

Based on the evidence presented in this case, I cannot find that the claimant met her burden on proving that her work duties were a major cause of a disability or need for treatment for carpal tunnel syndrome or cubital tunnel syndrome. I am not left to wrestle with competing physicians’ reports as to whether this or that work activity was considered in their opinions, within any degree of certainty or likelihood, to be a major cause of her injuries or complaints. She does not present the need for weighing the credibility of differing reports on that point. The claimant offered very little by way of medical evidence to support

a finding of major cause. In the absence of medical evidence on causation, the claimant fails also to offer compelling circumstantial evidence as to the major cause of her conditions. Instead, she essentially relies on (1) the general notion that her job included data entry and running reports, (2) that a single work slip, without any accompanying records, from a physician included the words “work injury,” and (3) that she eventually had surgery for carpal tunnel and carpal cubital problems as her evidence for a finding of major cause. That is simply not enough to meet her burden on major causation.

As noted by the respondents at the hearing and in their brief, the claimant suffered from a number of symptoms, conditions, and complaints that she did not meaningfully discount as attributing or possibly attributing to the cause of her extremity injuries. The respondents further argue their point in noting that the claimant continues to make the same or similar complaints as she did prior to her surgeries.

Because I find that the claimant failed to meet her burden on a compensable injury, her claims for reasonable and necessary treatment, associated costs, and TTD⁴ must also fail.

B. Attorney’s Fee

In accordance with the above, the claimant is not entitled to an attorney’s fee.

VI. ORDER

Consistent with the findings of fact and conclusions of law set forth above, this claim is denied and dismissed.

SO ORDERED.

JAYO. HOWE
ADMINISTRATIVE LAW JUDGE

⁴ Because she fails to prove a compensable injury, I do not need to further address her claim for TTD benefits. I note, however, that her admission at the hearing that she worked during the time between her surgeries is not consistent with a claim of TTD.