

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G706581

TASHA HAWKINS, EMPLOYEE

CLAIMANT

FRITO-LAY, INC., EMPLOYER

RESPONDENT NO. 1

**INDEMNITY INS. CO. OF NO. AM.,
CARRIER**

RESPONDENT NO. 1

**DEATH & PERMANENT TOTAL
DISABILITY TRUST FUND**

RESPONDENT NO. 2

OPINION FILED JUNE 7, 2021

Hearing before Chief Administrative Law Judge O. Milton Fine II on March 19, 2021, in Jonesboro, Craighead County, Arkansas.

Claimant *pro se*.

Respondents No. 1 represented by Mr. Lee J. Muldrow, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2, represented by Mr. David L. Pake, Attorney at Law, Little Rock, Arkansas, excused from participation.

STATEMENT OF THE CASE

On March 19, 2021, the above-captioned claim was heard in Jonesboro, Arkansas. A prehearing conference took place on January 26, 2021. The Prehearing Order entered on January 27, 2021, pursuant to the conference was admitted without objection as Commission Exhibit 1. At the hearing, the parties confirmed that the stipulations, issues, and respective contentions, as amended, were properly set forth in the order.

Stipulations

The parties discussed the stipulations set forth in Commission Exhibit 1. Following an amendment of Stipulation No. 3 and the addition of Stipulation No. 6 at the hearing, they are the following, which I accept:

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The employee/employer/carrier relationship existed on November 6, 2016, when Claimant sustained a compensable injury to her right hand. Respondents No. 1 accepted this claim as a medical-only one. A claim number was not assigned in connection with this incident/injury.
3. The employee/employer/carrier relationship existed on July 11, 2017, when Claimant sustained a compensable injury to her right shoulder. Respondents No. 1 accepted this claim and paid medical and temporary total disability benefits pursuant thereto. Claimant was assigned an impairment rating of four percent (4%) to the body as a whole for this injury. Respondents No. 1 have not controverted this rating; but they have not paid any permanent partial disability benefits pursuant to it.
4. Claimant suffered a condition in the form of right carpal tunnel syndrome. She underwent a carpal tunnel release in January 2019. Respondents No. 1 have controverted their responsibility for this condition.
5. Claimant's average weekly wage entitles her to compensation rates of \$464.00/\$348.00.

6. If called to testify, Ms. Melinda Hawkins would offer testimony within her personal knowledge that would corroborate the testimony of Claimant.

Issues

At the hearing, the parties discussed the issues set forth in Commission Exhibit

1. After an amendment of Issue No. 2 at the hearing, the following were litigated:
 1. Whether the statute of limitations has run on this claim insofar as it relates to Claimant's claim for benefits in connection with her stipulated right carpal tunnel syndrome.
 2. Whether Claimant's sustained a compensable specific-incident injury in the form of her stipulated right carpal tunnel syndrome, or whether the right carpal tunnel syndrome is a compensable consequence of her stipulated compensable right-hand injury.
 3. Whether Claimant is entitled to reasonable and necessary medical treatment of her stipulated right carpal tunnel syndrome.
 4. Whether Claimant is entitled to temporary total disability benefits in connection with her stipulated right carpal tunnel syndrome.
 5. Whether Claimant is entitled to permanent partial disability benefits in connection with the impairment rating that has been assigned for her stipulated compensable right shoulder injury.

Contentions

The respective contentions of the parties, following an amendment by Respondents No. 1 at the hearing, read:

Claimant:

1. Claimant contends that she underwent a carpal tunnel release with Dr. John Bracey on or about January 4, 2019; and he took her off work to recover from the surgery. Since that time, Respondents No. 1 have been unable to obtain Dr. Bracey's report. Claimant further contends that she is entitled to have the surgical expense of the release, and the temporary total disability paid, irrespective of Dr. Bracey's recordkeeping.

Respondents No. 1:

1. For her right-hand injury, Claimant has received appropriate care and benefits. With respect to her carpal tunnel syndrome, Respondents No. 1 are not contending that the condition is not causally related to her stipulated compensable injury. Instead, they are contending that any treatment that she received from Dr. Bracey from late 2018 forward is barred by the statute of limitations, and therefore, not their responsibility. For the July 11, 2017, right shoulder injury—with the exception of the conceded four percent (4%) rating—Claimant is entitled to no additional medical or indemnity benefits beyond the maximum medical improvement declaration of July 11, 2018.

Respondent No. 2:

1. Respondent No. 2 defers to the outcome of the litigation on the stated issues.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the evidentiary record, and having had an opportunity to hear the testimony of the claimant and to observe her demeanor, I hereby make the following findings of fact and conclusions of law in accordance with Ark. Code Ann. § 11-9-704 (Repl. 2012):

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations set out above are reasonable and are hereby accepted.
3. Claimant's Proffered Exhibit 1 will not be admitted into evidence.
4. Respondents No. 1 Proffered Exhibit 1A will be admitted into evidence.
5. Respondents No. 1 Proffered Exhibit 3 will be admitted into evidence.
6. Respondents No. 1 Proffered Exhibit 4 will be admitted into evidence.
7. The preponderance of the evidence establishes that Claimant's initial claim for benefits in connection with her stipulated right carpal tunnel syndrome is barred by the statute of limitations set forth in Ark. Code Ann. § 11-9-702(a)(1) (Repl. 2012).
8. Claimant has not proven by a preponderance of the evidence that her stipulated right carpal tunnel syndrome is a compensable consequence of her stipulated compensable right-hand injury.

9. Because of Findings/Conclusions Nos. 7 and 8, *supra*, the issues concerning whether Claimant is entitled to reasonable and necessary medical treatment and temporary total disability benefits in connection with her stipulated right carpal tunnel syndrome are moot and will not be addressed.
10. The evidence preponderates that Claimant is entitled to permanent partial disability benefits at her stipulated compensation rate in connection with the impairment rating of four percent (4%) to the body as a whole that she was assigned for her stipulated compensable right shoulder injury.

PRELIMINARY RULINGS

Admission of Claimant's Proffered Exhibit 1

At the hearing, Claimant moved for the admission of this proffered exhibit, which contains her medical records. Counsel for Respondents No. 1 objected to its admission, stating that he was not furnished with a copy thereof at least seven days before the hearing. The Prehearing Order reads in pertinent part:

Exhibits and the identity of witnesses must be exchanged at least seven (7) days prior to the hearing . . . [m]edical reports must be exchanged at least seven (7) days prior to the hearing pursuant to Ark. Code Ann. § 11-9-705(c)(2)(A) (Repl. 2012). Evidence not disclosed in compliance with this Order shall not be considered as evidence unless prior permission of the Commission is obtained and for good cause shown.

Claimant admitted that she did not furnish a copy of the proffered exhibit to counsel for Respondents No. 1. Asked why she did not comply with the Prehearing Order, she responded that she did not receive a copy of it. But she confirmed that the Commission has her correct mailing and email addresses in its file. As Commission

Exhibit 2, a copy of the letter that accompanied the Prehearing Order, shows, it was send to these addresses.

After due consideration, I cannot and do not credit Claimant's testimony on this matter. The determination of a witness' credibility and how much weight to accord to that person's testimony are solely up to the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). The Commission must sort through conflicting evidence and determine the true facts. *Id.* In so doing, the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.*

Even if this were not so, that fact remains that Claimant was instructed during the prehearing telephone conference that she had to provide counsel for Respondents No. 1 with a copy of her medical records that she wanted introduced at the hearing, and that she had to do so at least seven days in advance of the hearing. When told this, she indicated that she understood. In addition, she was advised that because of her *pro se* status, she could consult the Legal Advisor Division of the Commission if she had any questions.

Under Ark. Code Ann. § 11-9-705(c)(2)(A):

Any party proposing to introduce medical reports or testimony of physicians at the hearing of a controverted claim shall, as a condition precedent to the right to do so, furnish to the opposing party and to the commission copies of the written reports of the physicians of their findings and opinions at least seven (7) days prior to the date of the hearing.

Respondents No. 1 did not consent to a waiver of the violation per § 11-9-705(c)(4). Nonetheless, pursuant to § 11-9-705(c)(3), I have the discretion to admit or exclude the evidence. *See Coleman v. Pro Transportation, Inc.*, 97 Ark. App. 338, 249 S.W.3d 149 (2007). But under the circumstances presented here, I cannot properly admit the evidence. Claimant's explanation for her failure to provide the proffered exhibit within the requisite period is not acceptable. Hence, Claimant's Proffered Exhibit 1 will not be admitted into evidence, and will not be considered. *See Jobe v. St. Vincent North/Sherwood*, 2005 AR Wrk. Comp. LEXIS 206, Claim No. F105594 (Full Commission Opinion filed May 27, 2005), *aff'd sub nom. St. Vincent Health Systems v. Jobe*, No. CA 05-823 (Ark. Ct. App. Feb. 8, 2006)(unpublished).

Admission of Respondents No. 1 Exhibits 1A, 3 and 4

Shown a copy of Respondents No. 1 Proffered Exhibit 1A, a medical record that was originally part of Respondent No. 1 Exhibit 1 (the balance of which Claimant did not object to), Claimant contended that she did not receive a copy of this from counsel for Respondents No. 1. Counsel responded that he sent it to her using the same email address that the Commission employed—which, again, she confirmed was accurate. After due consideration, the objection to the document's admission is hereby overruled. The evidence preponderates that Claimant was served with a copy of the proffered exhibit at least seven days before the hearing, per § 11-9-705(c)(2)(A) and the Prehearing Order. It will be admitted into evidence and given due weight.

As for Respondents No. 1 Proffered Exhibits 3 and 4, spreadsheets, Claimant likewise asserted that she was not served with them within the requisite period, per the

Prehearing Order. However, the evidence shows otherwise. Consequently, they will also be admitted into evidence and given due weight.

CASE IN CHIEF

Summary of Evidence

Claimant was the sole witness at the hearing. As discussed above, the parties stipulated that the testimony of her mother, Melinda Hawkins, would be corroborative regarding subjects within the latter's personal knowledge.

Along with the Prehearing Order discussed above, the exhibits admitted into evidence in this case were Commission Exhibit 2, the letter from my office to the parties dated January 27, 2021, concerning the Prehearing Order, consisting of one page; Respondents No. 1 Exhibit 1, a compilation of Claimant's medical records, consisting of one index page and 16 pages thereafter; Respondents No. 1 Exhibit 1A, a letter from Dr. Shahryar Ahmadi dated November 6, 2017, consisting of one page; Respondents No. 1 Exhibit 2,¹ a spreadsheet, consisting of seven numbered pages; Respondents No. 1 Exhibit 3, a spreadsheet and a letter from Dr. Ahmadi dated May 23, 2018, consisting of two numbered pages; Respondents No. 1 Exhibit 4, a spreadsheet, consisting of one page; Respondents No. 1 Exhibit 5, another compilation of Claimant's medical records, consisting of one index page and 52 numbered pages thereafter; Respondents No. 1 Exhibit 6, insurance claim forms, consisting of 12 numbered pages; Respondents No. 1

¹This exhibit, along with Respondents No. 1 Exhibits 3-4 and 6-8, do not comply with the Prehearing Order, which requires that all exhibits—whether medical or nonmedical—to contain an index. Respondents No. 1 are cautioned to comply with this in the future.

Exhibit 7, a spreadsheet, consisting of one page; and Respondents No. 1 Exhibit 8, medical bills, consisting of eight numbered pages.

Without objection, I have also incorporated herein by reference the Commission's file in this matter; and I have blue-backed to the record the post-hearing brief of Respondents No. 1 filed on April 1, 2021, consisting of four numbered pages.

Adjudication

A. Statute of Limitations

Introduction. Claimant has alleged herein that in addition to her stipulated compensable right hand and shoulder injuries, she also suffered a compensable injury in the form of right carpal tunnel syndrome. The parties have stipulated that Claimant in fact has this condition, and that Respondents No. 1 have controverted it. But the latter, while stating at the hearing that they are no longer contending that the condition is not causally related to her job for Respondent Frito-Lay, maintain that they nonetheless do not bear responsibility for it because this portion of her claim is barred by the statute of limitations.

Standards. Under Ark. Code Ann. § 11-9-702(a)(1) (Repl. 2012):

A claim for compensation for disability on account of an injury, other than an occupational disease and occupational infection, shall be barred unless filed with the Workers' Compensation Commission within two (2) years from the date of the compensable injury. If during the two-year period following the filing of the claim the claimant receives no weekly benefit compensation and receives no medical treatment resulting from the alleged injury, the claim shall be barred thereafter. For purposes of this section, the date of the compensable injury shall be defined as the date an injury is caused by an accident as set forth in § 11-9-102(4).

The burden rests on Claimant to prove that her claim was timely filed. *Stewart v. Ark. Glass Container*, 2010 Ark. 198, 366 S.W.3d 358; *Kent v. Single Source Transp.*, 103 Ark. App. 151, 287 S.W.3d 619 (2008). Under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012), she must prove this by a preponderance of the evidence. The standard “preponderance of the evidence” means the evidence having greater weight or convincing force. *Barre v. Hoffman*, 2009 Ark. 373, 326 S.W.3d 415; *Smith v. Magnet Cove Barium Corp.*, 212 Ark. 491, 206 S.W.2d 442 (1947).

Discussion. At the hearing, Claimant testified that she believes that her carpal tunnel syndrome was caused by the same accident that resulted in her right hand becoming injured: the November 6, 2016, incident at the Frito-Lay plant where she was employed. She described the incident in question:

What [the machine] does, it processes chips. And it’s a big slide gate. It’s like a big old slide gate, and the chips goes down, and it goes down into the slide gate . . . [a]nd it’s like two metal—it opens up, and it’s like a hole and it’s two metals on each side. And when you cut the air off, it opens up and expands to the chips can fall down and get packaged in the packing department. So what we do is clean all of that. We sanitize that. And you have to cut the air off to sanitize it. And if you cut the air back on, the slide gates close going like 70 to 75 miles per hour. So if you get your hand caught in there, it’s a chance that it can get cut off, which my hand got caught in there. It just was by the grace of God that it didn’t get cut off. And I was in the machine cleaning the machine. I had cut the air off. I couldn’t lock it out because it was broke, so you can’t lock it out, so I just cut the air off. I did what I [was] suppose[d] to do. I cut the air off. And there was another girl—she knew my hand was in there, and she wasn’t trying to do it, she was just—wasn’t paying no attention. And she cut it back on knowing my hand was in there and it slammed my hand . . . [i]t’s two slide gates that went metal to metal and closed my hand in it.

While Claimant later testified that her symptoms worsened in an incident that occurred at work in 2017—an incident that, while she could not identify by date,

occurred on March 28, 2017, according to her report to Dr. Jeffrey Barber on March 29, 2017—she maintained that her hand numbness began with what occurred on November 6, 2016. This correlates with her medical records. Dr. John Bracey on December 19, 2018, wrote:

Patient is a 40-year-old returns today for follow-up evaluation. At last visit she was noted to have numbness in the right hand which we thought may be secondary to carpal tunnel syndrome. Again she reports that this began after slamming her hand in a slight [sic] gait [sic] in 2016. It has been more aggravated since March last year.

Unquestionably, the carpal tunnel, per the evidence and Claimant's position, is specific-incident and not gradual-onset in origin.

Following the stipulated work-related incident of July 11, 2017, when she suffered a compensable injury to her right shoulder, she was sent for testing. It was this nerve conduction testing, according to Claimant, that revealed that she had right carpal tunnel syndrome. Claimant ended up undergoing a right carpal tunnel release procedure on January 4, 2019. The evidence does not show that Respondents No. 1 furnished Claimant with any benefits in connection with her carpal tunnel syndrome. To the contrary, they have controverted the injury—as Stipulation No. 4 reflects.

Consequently, in order to comply with the applicable limitations period, Claimant must have filed a claim in connection with her carpal tunnel syndrome by November 6, 2018. This she did not do. The first time she even notified Respondents No. 1 that she had this condition and that it was work related was on January 25, 2019, when she appeared for a joint petition hearing that did not proceed. She has not filed a Form AR-C to request benefits for her carpal tunnel syndrome. On July 16, 2019, in a prehearing

questionnaire response, her attorney alleged that the carpal tunnel was compensable and asked for medical and temporary total disability benefits pursuant thereto. Assuming only for the sake of argument that this filing constitutes a claim under § 11-9-702(a)(1), it was not filed soon enough to prevent the abridgement of the statute of limitations. This is also the case even if the carpal tunnel did not occur until March 28, 2017. Claimant has not proven by a preponderance of the evidence that her claim was timely filed. Instead, the evidence preponderates that the above-cited statute of limitations has run.

In making this finding, I am aware that another theory that has been posited as to the origin of Claimant's carpal tunnel is that it is a compensable consequence of her stipulated compensable right-hand injury of November 6, 2016. If an injury is compensable, every natural consequence of that injury is likewise compensable. *Air Compressor Equip. Co. v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000). The test is whether a causal connection between the two episodes exists. *Id.*; *Jeter v. McGinty Mech.*, 62 Ark. App. 53, 968 S.W.2d 645 (1998). The existence of a causal connection is a question of fact for the Commission. *Id.*; *Carter v. Flintrol, Inc.*, 19 Ark. App. 317, 720 S.W.2d 337 (1986). It is generally a matter of inference, and possibilities may play a proper and important role in establishing that relationship. *Osmose Wood Preserving v. Jones*, 40 Ark. App. 190, 843 S.W.2d 875 (1992). It is not essential that the causal connection be established via medical evidence. *Koster v. Custom Pak & Trissel*, 2009 Ark. App. 780, 2009 Ark. App. LEXIS 947; *Gerber Prods. v. McDonald*, 15 Ark. App. 226, 691 S.W.2d 879 (1985). Under Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2012),

Claimant has the burden of establishing the existence of a compensable consequence by a preponderance of the evidence. But as shown above, Claimant has offered no evidence in support of this theory. Instead, she has consistently maintained that her carpal tunnel syndrome was caused by a specific incident. Thus, the statute of limitations analysis employed *supra* is the only appropriate one here.

B. Remaining Issues Pertaining to Right Carpal Tunnel Syndrome

Because of the above findings, the issues regarding whether Claimant is entitled to reasonable and necessary medical treatment and temporary total disability benefits in connection with her stipulated right carpal tunnel syndrome are moot and will not be addressed.

C. Permanent Partial Disability Benefits

Introduction. Claimant has asserted that she is entitled to permanent partial disability benefits in connection with her stipulated compensable right shoulder injury.

Standards. Permanent impairment, generally a medical condition, is any permanent functional or anatomical loss remaining after the healing period has been reached. *Ouachita Marine v. Morrison*, 246 Ark. 882, 440 S.W.2d 216 (1969). Pursuant to Ark. Code Ann. § 11-9-522(g) (Repl. 2002), the Commission adopted the AMA Guides as an impairment rating guide. See AWCC R. 099.34. A determination of the existence or extent of physical impairment must be supported by objective and measurable physical or mental findings. Ark. Code Ann. § 11-9-704(c)(1)(B) (Repl. 2012)(“Objective findings” are “those findings which cannot come under the voluntary control of the patient.” *Id.* § 11-9-102(16)(A)(1)). Permanent benefits are to be awarded

only following a determination that the compensable injury is the major cause of the disability or impairment. *Id.* § 11-9-102(F)(ii). “Major cause” is defined as “more than fifty percent (50%) of the cause,” and a finding of major cause must be established by a preponderance of the evidence. *Id.* § 11-9-102(14). Any medical opinion must be stated within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16) (Repl. 2012).

Discussion. The medical evidence before me reflects, as the parties have stipulated, that Claimant was assigned an impairment rating of four percent (4%) to the body as a whole in connection with her stipulated compensable right shoulder injury. This was done by Dr. Ahmadi on July 11, 2018. As the parties have also stipulated, while Respondents No. 1 have not controverted this rating, they have not paid any permanent partial disability benefits pursuant to it. I hereby find that Claimant has proven by a preponderance of the evidence that she is entitled to permanent partial disability benefits in connection with this rating: eighteen (18) weeks of benefits paid at her stipulated permanent partial disability rate of \$348.00 per week.

CONCLUSION AND AWARD

In accordance with the findings of fact and conclusions of law set forth above, Claimant’s claim for initial benefits in connection with her stipulated right carpal tunnel syndrome is hereby denied and dismissed.

Respondents No. 1 are directed to furnish/pay benefits in accordance with the findings of fact and conclusions of law set forth above regarding Claimant’s claim for additional benefits in connection with her stipulated compensable right shoulder injury.

All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. § 11-9-809 (Repl. 2012). *See Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (1995).

IT IS SO ORDERED.

Hon. O. Milton Fine II
Chief Administrative Law Judge