

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. H202392

TABITHA KRUGER, Employee	CLAIMANT
NORTECH GRAPHICS, INC., Employer	RESPONDENT
TRAVELERS INS. CO., Carrier	RESPONDENT

OPINION FILED OCTOBER 20, 2022

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

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

Respondents represented by GUY ALTON WADE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On July 26, 2022, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on May 18, 2022, and a Pre-hearing Order was filed on May 18, 2022. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The relationship of employee-employer-carrier existed between the parties on or about July 1, 2020.
3. The claimant was earning sufficient wages on July 1, 2020, to entitle her to compensation at the weekly rate of \$320.00 for temporary total disability benefits.
4. The respondents have controverted this claim in its entirety.

By agreement of the parties the issues to litigate are limited to the following:

1. Whether Claimant sustained a compensable injury to her wrists bilaterally in the form of carpal tunnel syndrome on or about July 1, 2020.

2. Whether Claimant is entitled to treatment for bilateral carpal tunnel syndrome, as a result of a gradual onset work injury manifesting in July of 2020.

Claimant's contentions are:

“Claimant contends she is entitled to medical treatment for her injury. The claimant reserves all other issues.”

Respondents' contentions are:

“Respondents contend that the claimant's July 1, 2020 (WCC Claim No. H202392) event is not compensable as claimant's symptoms and complaints pre-existed her employment with the insured.”

The claimant in this matter is a 36-year-old female who was employed by the respondent on or about July 1, 2020, when she alleges she sustained a compensable injury to her wrists bilaterally in the form of carpal tunnel syndrome. The respondent-employer in this matter manufactures and ships screen printing equipment and supplies. During the time period the claimant alleges the onset of bilateral carpal tunnel syndrome, she testified that she was sanding or buffing aluminum screen forms. Following is a portion of her direct examination testimony:

Q When did you go to work for Nortech Graphics?

A January of 2020.

Q And what job was your first one there at Nortech?

A A drum sander.

Q And what do you do as a drum sander?

A You drum sand, screen frames, you get the rough edges off of it, and then you get ready to ship.

Q So how does that sanding process work?

A It's a drum sander that's bolted to the concrete floor. It's an industrial one. It's a big one. You take the screens and you push in with your body and you use force to get all the stuff off. You have a lot of vibration and what-not that's on the machine coming off. It vibrates pretty much your whole body to get it all.

Q And the screen that you're holding or the frame, are you holding it with both hands?

A Yes, ma'am.

Q And how many hours a day were you doing that job when you started at Nortech?

A Eight hours a day.

The claimant also testified that she was employed with the respondent in different job areas as well. Following is that testimony:

Q And at some point did you have other job duties at Nortech?

A Yes, ma'am. I became a floater after being there a while.

Q And in a floating job, what were your duties?

A Just whatever needed to be done. I would go and paint like the – we had stuff on the screens or I'd go put ECO frames together.

Q And so putting ECO Frames together, what would that involve?

A You put two metal – two metal brackets and four metal brackets to one side of the screen and then you take Saran wrap and you wrap it on both sides so it's secure and then you stack them on the thing.

Q And did that require two hands?

A Yes, ma'am.

Q Was there anything you did at Nortech that did not require the use of your hands?

A No, ma'am.

Q And in the squeegee department, what was your job?

A To get the squeegees out and to make sure the quality and everything was good.

Q And what kind of squeegee are you talking about? Can you describe it?

A Some would be aluminum with Duro in it and some would be wood with Duro in it, and it's what you would take on your screen and press the ink onto your tee shirt.

Q So it would kind of slide down the tee shirt?

A Uh-huh.

Q And how did you make the squeegee?

A There is like this stand, you put the boards over there. You get your Duro and everything ready and you got the glue thing and you run the squeegee down the board and then you put your Duro in and make sure it's all nice and tight all up to the wood and no holes or nothing.

Q So what is Duro?

A Duro – it is – I don't know exactly what it is. It's what we put on the squeegees.

Q Is it soft?

A Not really. It's a rubber kinda.

Q And what do you do to make sure it's up to the edges?

A You have to put like force in it. You put your body into it.

Q So you use your hands to press it down?

A Two hands.

The claimant's testimony indicates that she believes that her bilateral carpal tunnel syndrome was brought on by her use of a drum sander. Following are portions of her direct examination testimony:

Q And why did you feel that the drum sander was so difficult on your hands?

A Because I never had problems before I started working there doing that. I would wake up and my hands would be swollen, throbbing, and hurting, hurting.

Q When you were doing the drum sander, were you having to grip the metal frame the entire time?

A Yes, ma'am. Yes, ma'am, otherwise it would just take off flying because all the force of that RPM spinning.

Q And the frame that you were seeing, is that metal?

A Yes, ma'am.

The claimant testified that she reported her difficulties to her supervisor "Willie" and Chris Miles, the owner of the respondent company, as follows on direct examination:

Q And did you report those problems?

A Yes, ma'am. I talked to Willie and I asked Willie, I said, "I can't do the drum sander no more, is there anything else I can do in the company because my hands can't take it no more."

Q And who is Willie?

A He is the supervisor. He's like the shop supervisor. He's the overseer.

Q Now, did you speak to anybody else other than Willie about the problem with your hand?

A Yes, ma'am. Whenever I was in that section, they were having – they had some shortages on the grinders and stuff so I had to go over and flatten – they didn't have a flattener and I'd go over and flatten the aluminum frames on like this concrete cinder block like thing.

Q Who did you speak to about the problems with your hands?

A I told Mr. Miles that I wasn't – I was having problems with my hands, that I was going to need to have surgery sometime and he said that whenever we are not as busy, cause we're a production company, we're always busy and as soon as we're not busy he'd give me the time off for it.

Q Did you tell him what had caused the problem to your hands?

A No, ma'am.

Q So when you told Willie what you described earlier, did he offer to have you fill out any sort of workers' compensation paperwork?

A No, ma'am. He never talked to me about it.

Q Did he offer to send you to a doctor?

A Oh, no, ma'am.

Q And did you go to a doctor on your own?

A Oh, yes. Yes, I did.

Q And was that before or after you talked to Willie?

A That was after I let Willie know about that something's got to change; yes.

Q And what doctor did you see first?

A Dr. Chu.

The claimant was seen at Crossroads Medical Clinic in Harrison, Arkansas, on March 5, 2020, by Dr. Victor Chu. Following is a portion of that medical record:

Chief Complaint
Pain in joints.

History of Present Illness

Patient is here for extreme joint pain including hands and wrists. She states she wakes up in the morning with her finger joints so swollen that they feel very tight and it is difficult to make a closed fist. She has been working at NorthTech graphics, and uses a drum sander 8 hours daily. Since then she has noticed increasing pain in her wrists and hands. She has not had this type of pain in the past. She has not had any diagnosis of carpal tunnel or arthritis. She does not recall anyone in her immediate family who has rheumatoid arthritis. She states the pain is so severe her for her at nighttime and is a burning tingling type of pain that it keeps her awake at night.

Assessment

Assessed

1. Acute pain of both wrists (719.43) (M25.531, M25.532)
2. Joint pain (719.40) (M25.50)
3. Joint swelling (719.00) (M25.40)

Phalens and Tinnels +

Plan

Acute pain of both wrists

1. Follow-up 4 weeks Outpatient Procedure Status:
Hold For – Scheduling Requested for:
10Mar2020.
Ordered: For: Acute pain of both wrists; Ordered By:
Winford, Amanda; Performed: Due: 15Mar2020.
2. Education has been given regarding your diagnosis;

Status: Complete; Done: 10Mar2020 01:19PM.

Ordered: For: Acute pain of both wrists; Ordered by: Winford, Amanda.

Acute pain of both wrists, Joint pain, Joint swelling

3. Referral Misc Evaluation and Treatment Referral – needs nerve conduction both arms.

Status: Hold For – Scheduling Requested for: 10Mar2020.

Ordered: For: Acute pain of both wrists. Joint pain, Joint swelling; Ordered By: Winford, Amanda;

Performed: Due: 15Mar2020.

(MU) Care Summary provided: Yes.

On March 17, 2020, the respondent-employer found itself in the position of many employers and initiated a layoff from March 17 to April 26, 2020, due to COVID-19. When employees were allowed to return, they were not engaged in the normal production process. Instead, employees, including the claimant, performed maintenance and cleanup. When production did slowly begin, more experienced employees did production work while less experienced employees, including the claimant, continued with maintenance and cleanup. Eventually, the claimant was moved to the squeegee department in September of 2020.

On August 21, 2020, the claimant underwent a bilateral upper extremity EMG that was ordered from Crossroads Medical Clinic in Harrison, Arkansas, by Dr. Chu. Dr. Kevin Jackson performed the EMG testing. Following is a portion of that diagnostic testing report:

Patient History:

33 y/o female with c/o BUE diffuse intermittent digit paresthesias and volar wrist and forearm pain, 3 months onset, night exacerbation and with driving. C/O reduced grip. No obvious atrophy or severe weakness. DTRs 2/4 in BUEs. Denies cervical pain/dysfunction. Denies diabetes or blood thinners.

Findings:

Slowing of bilateral median motors and sensories across the wrist, motor amplitudes preserved. Slowing of the left ulnar motors across the elbow, amplitudes preserved. EMG

needle exam is unremarkable for axon loss with normal motor unit recruitment and morphology.

Conclusions:

1. Moderate bilateral carpal tunnel with focal motor/sensory demyelination.
2. Compromise of the left ulnar nerve through the ulnar groove with mild focal motor demyelination.
3. EMG of BUEs is unremarkable for axon loss that would indicate a significant cervical radiculopathy.

On August 26, 2020, the claimant was seen at Arkansas Orthopedics and Sports Medicine in Harrison, Arkansas, by PAC Josh Trinkel. Following is a portion of that medical record:

PATIENT HISTORY: Tabitha Kruger is a 34-year-old female who presents to the clinic secondary to numbness and tingling into the hands and elbows. Onset was back in December 2019. No specific inciting factors associated with the onset. In turn, she reports each finger is numb throughout the majority of each day. A lot of difficulty working at an Oratec graphics where she has to lift, push, pull throughout each portion of the day as well as some technical dexterity type job performance duties as well. She started to have brace, gabapentin, meloxicam, activity modifications, which is not resulting in any therapeutic benefit. She currently reports that she has really noticed some grip strength weakness, but overall just wanting to discuss further options secondary to be extensive conservative options that she has underwent at this point that she is really not proven to be worthwhile.

PHYSICAL EXAM: She is 5 feet 4 inches and 169 pounds. General appearance: A well-developed, well-nourished 34-year-old female in no acute apparent distress. HEENT is normocephalic and atraumatic. Cranial nerves II through XII are intact. EOMs are intact. Nares are patent. Neck is supple. Oral mucosa is pink and moist. She hears my voice across the room without difficulty. The bilateral upper and bilateral lower extremities demonstrate good tone and good range of motion. There is no evidence of any crepitus, locking, abrasions, rashes, lesions, ulcerations or obvious deformity. Upon inspection of the upper extremity, she has

got a positive Tinel's over the median nerve. Positive MCCT and positive Phalen's less than 10 seconds. Equivocal findings over the bilateral elbow over the cubital tunnel with positive Tinel's, positive Phalen's less than minute. Strength still 5/5. She has sensation diminished in all dermatomal planes to light touch. She has no evidence of hypothenar or thenar atrophy. Otherwise, unremarkable.

DIAGNOSTIC STUDIES: EMG nerve conduction study demonstrates compromise of the carpal tunnel as well as ulnar nerve, left more so than the right.

ASSESSMENT AND PLAN: I had a very long conversation with her with relation to the above. I recommended we talked extensively about surgical intervention including that of right endoscopic carpal tunnel ulnar nerve release, then two weeks later going on with left endoscopic carpal tunnel ulnar release. I went over the preoperative education including the risks, benefits, and complications as well as extensive postoperative course and she would like to talk to her appointment to discern in the best time and trying to facilitate her time off. In turn, she will plan to give us call back. We will get a lead off with the right endoscopic carpal tunnel ulnar release and then two weeks later left endoscopic carpal tunnel ulnar nerve release.

The respondent called Ms. Tonya Bousquet as a witness in this matter. Ms. Bousquet has performed many roles for the respondent, including office manager and payroll. It should also be noted that Ms. Bousquet is married to "Willie", the claimant's supervisor. Ms. Bousquet also testified that her job included dealing with workers' compensation claims. Ms. Bousquet gave direct examination testimony about how she handles workers' compensation injuries as follows:

Q (Mr. Wade continuing.) What do you do if somebody comes to you that's been injured?

A Well, first I'm going to, one, see if they need first aid. Usually if they need first aid, they're not coming to me first. I don't do well with blood and things like that so – and they know that. In hiring, I always tell them who to see and that. But if they come to me, and depending on what it

is, I'll either first call 911 or we'll make an appointment for them, making arrangements with whoever.

Q Do you then follow up with your carrier? Do you have any responsibilities of notification there as well?

A Yes.

Q In this case, that would be Travelers?

A Yes.

Q Is that correct?

A Travelers Insurance.

Q Now, Ms. Kruger, did she ever come to you and claim that she was having any kind of problems or complaints with her hands or wrists?

A Never.

On cross examination, Ms. Bousquet was asked about the handling of a different workers' compensation claim the claimant had when a drill press went into her hand on March 17, 2021, as follows:

Q And you said that you handle all the workers' compensation claims; is that correct?

A Yes.

Q And so do you remember having a drill press go through her hand?

A (Witness nods.)

Q Did she come to you for first aid?

A She did. Well, she came – I don't know if she came to me first but she ended up in my office at one point.

Q And do you have records that when you filed that workers' compensation claim?

A I have information about the event.

Q Do you have your notes when you turned that in to Travelers?

A I do not.

Q Did you turn that in to Travelers?

A I worked with Chris on it, but I don't know that that was ever completed at the time.

Q So you do not know if that accident was ever turned in to Travelers?

A I don't know about the paperwork for that, but I know that there was conversation with them about that event.

Q You know there were conversations with Travelers?

A Well, I spoke to Chris about it, let me rephrase that. I talked to Chris.

Q So you don't know?

A Right.

Q But you never turned a claim in to Travelers?

Q (Ms. Brooks continuing.) Do you know how long or when you reported the May 21st, 2021 injury to Travelers?

A I didn't bring that information with me.

Q Did you look for it?

A I'd have to look it up?

Q Did you report it?

A I filled out the paperwork for it; yes.

Q Do you remember about how long it was after her accident happened?

A I don't. I'd have to – it's been a while.

Q You did the accounts receivable. Did you also do like payments out from the company? Did you write checks for the company?

A I processed them. I don't always write them. I'll put them in envelopes and mail them often.

Q And do you, as you're doing payroll, do you – how does that happen? Do you mail checks out to employees or –

A They are direct deposited.

Q Did you direct deposit any money into Ms. Kruger's account after the injury that were not from Travelers?

A I'd have to pull paper records on that.

Q So you don't remember?

A Yeah, I can't tell you. I didn't look up any of that for today; no.

The respondent also called Mr. Chris Miles as a witness. Mr. Miles is the owner of the respondent-employer. Mr. Miles testified that he was aware of the claimant and while he does have other businesses, he has an office and spends time at the respondent-employer's facility. On direct examination, Mr. Miles was asked about his knowledge of the claimant's reporting of her bilateral carpal tunnel syndrome as follows:

Q Now, you also heard the testimony with regard to her claiming that the first time and first person to whom she reported her alleged injury was you?

A Yeah.

Q Did she ever report to you a problem with her hands or wrists?

A Not an injury or anything like that. We have the – nothing like what she’s described here; no.

Q Now I know there was a May 17th of 2021 event where a buffer kind of went haywire.

A Yes.

Q We’re not talking about that?

A No. I’m aware of that. I took her to the doctor.

Q Did she ever tell you that she was having problems with her hands or wrists that she was claiming was related to any position or job she did at Nortech?

A Not that I recall, nothing, you know...

Q If she had, what would you do?

A I would – she would either be moved or, you know, something. We don’t generally force people to do things that hurt their body. That’s not –

Q Would you have taken her to the doctor if she needed medical care?

A Oh, yes. Like that incident, we take people to the doctor if something happens.

Q Would you have completed any paperwork or gotten somebody else to complete paperwork?

A Yeah, Tonya generally handles all that stuff.

However, Mr. Miles’ testimony about how workers’ compensation claims are handled is contradictory to how the respondents handled the claimant’s injury when the drill press entered into her hand as stated in Mr. Miles’ own testimony. Following is a portion of his cross-examination testimony:

Q Right. And do you recall her being injured by the drill press?

A Yeah.

Q Her hand?

A Uh-huh.

Q And did you turn that in to work comp?

A No. No, that was like – I don't remember how many days you are off. We don't generally try to get them involved until we know if it's a serious thing or not. If there's going to be time off, a significant period of time off, our employees aren't paid. When there's a workmen's comp claim filed, there's a time period where they're not paid. If it's going to be a short period of time, we don't want them to not have pay so we just pay them out of our pocket, take them to the doctor, pay the doctors, you know, if it's a short thing. If somebody gets something in their eyes, somebody – that incident she was wearing a glove that was – that ran into a drill bit, I guess, and the glove got sucked up around the drill bit. I don't think there was any cutting or anything. I think it tightened up really tight around the glove on the drill bit.

Q So –

A I don't think there's a doctor visit or anything. I don't remember, but...

Q There was no documentation of that, though, sent to workers' compensation commission –

A No.

Q -- or to Travelers?

A No. It's – again, if it's something short, you know, what we would think is a non-significant thing, we just pay the employee so they don't go without pay.

Q And is that beneficial to you, too, not having to turn in to your insurance?

A Probably not because we're paying them and the insurance would be paying them.

Q So you're not worried about your rate?

A I mean –

MR. WADE: Your Honor, I'm going to object.

A (Witness continuing.) Our rates will hardly change over a two day time off work –

JUDGE WELLS: We have an objection. Go ahead.

MR. WADE: Your Honor, I object to the insinuation unless she has somebody who is going to come in and talk about how such an insignificant event would affect an insurance rate. I object to any kind of insinuation.

MS. BROOKS: And, Judge, I was simply trying to get an understanding, a full understanding, of why they wouldn't report some claim.

JUDGE WELLS: I think you can ask the question about why, but I do think maybe there was some insinuation there a little bit tainted in the question but if you would like to ask him why he does it, I'm certainly going to allow you to do that.

MS. BROOKS: Thank you, Your Honor.

Q (Ms. Brooks continuing.) So on May 21st of 2021 when she had that injury, how long was it before you reported that to Travelers?

A When she was –

Q When she was beaten by the machine.

A The sander thing?

MR. WADE: The buffer.

A (Witness continuing.) – look through our emails. We talked to our broker within a very short period of time to let him know there's something going on, what do we have to do. Our local broker is not a part of Travelers. The person that sells us the policy, he advises us. We reach out to him if there's ever going to be something like significant, like I said, which this turned out to be, so we filed a claim. I'm not exact – I'm not 100 percent sure how many days went by but when we realized that she wasn't going to be coming back and needed some help, then we filed a claim. If it's going to – the absolute longest it could be is that whatever – however many days that there would be a period that the employee is not paid. After that, you know, that's when we have to start looking at filing a claim.

Q So did you pay her out of your funds or out of –

A Yeah, we left her on payroll for a period of time until we realized it was a actual situation that was going to require the insurance company.

The claimant has asked the Commission to determine if she sustained compensable injuries to her wrists and hands bilaterally in the form of carpal tunnel syndrome on or about July 1, 2020. It is the claimant's burden to prove her injuries compensable. The claimant in this matter, without question, has some credibility issues and/or is a horribly poor historian. I believe that in her deposition and testimony to the Commission, she overstated or exaggerated the time she spent working with the drum sander. However, I do believe that the claimant engaged with the drum sander for long periods of time from her initial employment in January of 2020 until the COVID layoff on March 17, 2020.

The claimant's first medical record introduced into evidence dated March 5, 2020, clearly indicates long use of the drum sander which she associates with her symptoms. The claimant denies any prior difficulties of this nature in that record, and I believe her testimony. I acknowledge the August 26, 2020, medical record from Arkansas Orthopedics and Sports

Medicine that says, “onset was back in December of 2019.” However, that date is very close to the claimant’s start date with the respondent in January of 2020. It is reasonable that this is an error on either the part of the claimant or the medical provider, but I do not find it to be evidence of some pre-existing condition. The March 5, 2020, medical record refers the claimant for a bilateral upper extremity EMG due to her symptoms. That EMG was performed on August 20, 2020, and diagnostically confirmed bilateral carpal tunnel syndrome.

There is some question about to whom and when the claimant reported her bilateral carpal tunnel syndrome. However, there are just as many questions in my mind as to how the respondent-employer deals with the reporting of workers’ compensation injuries. It seems the respondent-employer prefers not to report injuries unless they are severe in nature, and it is reasonable to assume the complaints of hand and wrist pain and tingling would not reach such a level. I also note that the claimant’s supervisor, “Willie,” was not called by either party at the hearing in this matter.

The claimant is able to prove through her bilateral upper extremity EMG test the existence of objective medical evidence of bilateral carpal tunnel syndrome. The claimant can also prove a causal connection between her bilateral carpal tunnel syndrome and her work running a drum sander for the respondent prior to her layoff in March of 2020. The claimant is able to prove by a preponderance of the evidence that she sustained bilateral carpal tunnel syndrome through gradual onset that culminated on or about March 5, 2020. I do not find that the claimant’s condition culminated on or about July 1, 2020. Instead, that condition culminated much earlier in March of 2020.

The claimant’s medical treatment presented into evidence is reasonable and necessary medical treatment for her bilateral carpal tunnel syndrome. This includes a surgical

recommendation from her September 26, 2020, visit to Arkansas Orthopedics and Sports Medicine and the aftercare that would be associated with that surgery.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on May 18, 2022, and contained in a Pre-hearing Order filed May 18, 2022, are hereby accepted as fact.

2. The claimant has proven by a preponderance of the evidence that she sustained compensable bilateral wrist and hand injuries in the form of bilateral carpal tunnel syndrome, which culminated on or about March 5, 2020.

3. The claimant has proven by a preponderance of the evidence that she is entitled to treatment for her bilateral carpal tunnel syndrome, which culminated on or about March 5, 2020.

ORDER

The respondents shall be responsible for payment of reasonable and necessary medical treatment for the claimant's compensable bilateral carpal tunnel syndrome, including surgical intervention recommended by Arkansas Orthopedics and Sports Medicine in Harrison, Arkansas. The respondents shall also be responsible for the aftercare of such surgery.

IT IS SO ORDERED.

ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE