

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. **H100772**

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| CHELSIE LAWSON, EMPLOYEE | CLAIMANT |
| EVEREST REHABILITATION HOSPITAL, EMPLOYER | RESPONDENT |
| THE HARTFORD, INSURANCE CARRIER | RESPONDENT |

OPINION FILED **NOVEMBER 29, 2021**

Hearing before ADMINISTRATIVE LAW JUDGE JOSEPH C. SELF, in Springdale, Washington County, Arkansas.

Claimant represented by JARID M. KINDER, Attorney, Ozark, Arkansas.

Respondents represented by A. GENE WILLIAMS, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On September 2, 2021, the above captioned claim came before the Workers' Compensation Commission in Springdale, Arkansas, for a hearing. A prehearing conference was conducted on June 10, 2021, and a prehearing order filed that same date. A copy of the prehearing order has been marked as Commission's Exhibit No. 1 and with modification and no objection is made part of the record.

The parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this case.
2. The employee/employer/carrier relationship existed on January 9, 2021.
3. Claimant sustained a compensable injury to her right ring finger on January 9, 2021.
4. The compensation rate for temporary total disability is \$373.00.

The issues to be litigated are limited to the following:

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1. Whether claimant sustained a compensable injury other than her right ring finger.
2. Whether claimant is entitled to medical benefits.
3. Whether claimant is entitled to temporary total disability benefits.
4. Attorney fees.

All other issues are reserved.

The claimant contends that:

“1. The claimant, Chelsie Lawson, sustained a compensable upper extremity and neck injury on January 9, 2021, while working for Everest Rehabilitation in Rogers, Arkansas when her hand got trapped and pulled in a folding wheelchair.

2. Despite objective evidence of injury, the respondents denied further treatment for the claimant’s injury.

3. The claimant contends that she is owed medical benefits as well as temporary total disability benefits from May 5, 2021, through a date yet to be determined.

4. Due to the controversion of entitled benefits, the respondents are obligated to pay one half of the claimant’s attorney’s fees.

5. Claimant reserves the right to raise additional contentions at the hearing of this matter.”

The respondents contend that “claimant’s right ring finger was smashed by a wheelchair on January 9, 2021. She was seen at an emergency room on January 11, 2021, and MedExpress Clinic on January 13, 201, January 29, 2021, and March 5, 2021. She was referred to Dr. Michael Maline, an orthopedist in Bentonville. Dr. Maline released her to limited duty on February 16, 2021, and to full duty after March 9, 2021. The claim was accepted, and all medical expenses have been paid. Temporary total disability benefits were paid for the period January 13, 2021, to February 28, 2021.”

The above stipulations are hereby accepted as fact. From a review of the record as a whole,

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including medical reports, documents, and having heard testimony and observed demeanor of the claimant, the following decision is rendered.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the prehearing conference conducted on June 10, 2021 and contained in the Prehearing Order filed the same date, are hereby accepted as fact.
2. Claimant has proven by a preponderance of the evidence that she sustained a compensable injury to her right upper extremity on January 9, 2021 and is entitled to additional medical treatment for that injury.
3. Claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment for a cervical spine injury.
4. Claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability from May 5, 2021 through July 26, 2021.

FACTUAL BACKGROUND

As I reviewed the transcript of the proceedings, I determined it would be helpful to have briefs on a couple of issues. My email to the parties requesting simultaneous briefs and the submissions by the parties are blue-backed and made part of the record.

HEARING TESTIMONY

Claimant was the only witness called for either party. She testified that she worked for respondent as a CNA at the time of her injury. Her duties consisted of assisting the patients with ADL, and she had to be prepared to lift people off the floor when necessary. She began working for the respondent in November 2020, and last worked for respondent on May 5, 2021. (TR.9)

On January 9, 2021, claimant testified that a nurse had opened a wheelchair and in operating the mechanism on it, claimant's finger was locked, pulling her down by her finger while she was

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holding the patient with her left arm so that he didn't fall. She testified that "When the chair got popped down, my finger just got closed. The nurse, I don't know how and why, but she did it very quickly and it jerked me this way while I had a hold of a standing confused patient with a gait belt on this side." (TR.10) She said it was a terrible pain. She was working with the nurse supervisor and reported the injury to that supervisor. An incident report was completed. Claimant testified that she finished her workday but experienced pain after work. (TR.11) The pain was in her right hand and wrist, her arm, localized mostly at the time to the hole in her finger and it got worse. The hole was where the lock had clamped and the glove protected it for the most part, but she rated the pain in her right hand at a 6 on a scale of 1-10. (TR.12)

Claimant said that after it happened, she wasn't allowed to leave. She said she worked overnight, so it was hard to know what specific day the injury happened, but she did go to the emergency room and then to MedExpress after she finished her next shift. (TR.13) Claimant said that after the visit at MedExpress, she was told not to lift, to ice it and take anti-inflammatories and pain medicine and follow back in a week. She said she couldn't reach, lift, grasp, turn a door, or do anything with that hand. (TR.14) Claimant said she did a course of physical therapy that helped and then went to Dr. Maline on February 17, who is an orthopedic doctor. (TR.15) Claimant testified she was still under restrictions but could return to work but couldn't lift more than a certain weight, but claimant could not remember if it was 15 pounds or 25 pounds. (TR.16) Claimant related that she had pain that shot up her arm all the way up to her shoulders anytime it was over exerted and that the pain in her wrist was constant. (TR.17)

Claimant said that she continued with physical therapy after her visit with Dr. Maline on March 10 and respondent refused to pay for additional physical therapy, so she started seeking treatment on her own. (TR.18) She began treating at Advanced Orthopedics with Dr. David Yakin,

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who ran tests and placed claimant on restrictions of no lifting, reaching, or pulling with a lifting restriction of 15 pounds. Dr. Yakin believed that claimant had cubital tunnel syndrome. (TR.21) Claimant testified Dr. Yakin wanted to do a cubital tunnel release, but she had not yet had the surgery because “I have to pay my bills and I have to work to do that, so I can’t treat myself for something that I can’t...”.

Claimant said her last day to work at Everest was May 1 (TR.22) but was terminated on May 5. She had a disagreement with someone that was about to be her boss. Claimant testified she was still under doctor’s restrictions at that time. She said she returned to work on July 26, 2021, and did not work between May 5, 2021, and July 26, 2021. She had been hired at her present employer, Encompass, but didn’t have a release from her doctor, so they couldn’t put her on the floor. Ultimately, she had to go back to work in July. (TR.23) She did not work between May 5, 2021, and July 26, 2021, because of the restrictions on her arm. Had the respondents offered her light duty within those restrictions, she testified she would have done it.

Claimant said that her right arm hurts and that she was in pain at the hearing. She said that it was “Always present like a reminder that my arm doesn’t work, and I use it to take care of people and I can’t do that now and it sucks.” (TR.24) She indicated that the pain in her right arm was in all the muscles in her forearm. She said her average pain on a scale of 1-10 was a six to a seven and work aggravated it. (TR. 25)

On cross examination, claimant said that she went to the emergency room two or three days after the injury and on January 13 went to MedExpress where she was sent by the insurance company. She said she related all her symptoms that she was having (TR.26) but did not have an explanation why there was no mention of arm pain or neck pain in the records of that visit. She didn’t know that the record reflected that she was not having numbness and tingling in her fingertips.

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She denied that she said that she was “75% better”, because she didn’t use that kind of talk. She asked for a referral to an orthopedic doctor on January 29 and that is how she came to see Dr. Maline. (TR.28) Claimant admitted she had been taking hydrocodone since 2020, a prescription she has from her family doctor. (TR.29)

Towards the end of January, claimant was offered a position in reception to accommodate her restrictions but when she went back to work, she was on the floor. She was lifting a patient and her arm went completely numb and she couldn’t feel anything in her hand. Claimant let her supervisor know and was told (TR.30) that she would lose her job if she left the shift. She went to the doctor and was told she could not be lifting so she was placed in reception. She said she was given a full-time job after the injury, was put there temporarily, and then respondent wanted to hire her full-time as a receptionist. (TR.31)

When claimant started work at respondents, she was also working for Pinnacle Home Health as a sub-contractor, taking care of a patient in his home two hours on Wednesdays and Fridays. She did that in the summer of 2020 but wasn’t sure if she was still taking care of him in January 2021; claimant thought she left in December (TR.32) because she was taking care of COVID patients and didn’t want to kill the 96-year-old man. (TR.33)

Claimant said that she received temporary disability benefits in February 2021 and in March was asked if she wanted to come in while her restrictions was still intact so that she could work. (TR.34) Claimant said that she went back to work at respondents for two or three shifts on the floor that she was scheduled for but couldn’t do the lifting and was pulled back off work. Claimant was then offered the job in reception. She was released to go back to work full-time by Dr. Maline on March 9, 2021, but claimant disagreed with that because she was still in physical therapy. She believed she was released to go back to work full-time March 9, 2021. (TR.35) When asked when she saw Dr.

Yakin, claimant's testimony was a bit unclear:

“I saw Dr. Yakin after you guys said that you guys weren't going to cover MedExpress who needed me to go back there after physical therapy and through all this stuff. I mean it's my health care and I have to be told where to go, what to do, and who to see. So, I did do that and there was a date in the same week that I couldn't get ahold of my adjuster to tell her that I can't lift, and I need to go see a doctor. He didn't get in touch with me, so I went to MedExpress because they are an urgent care clinic. I can't just walk into an orthopedist and say you are my doctor, see me. So, Mr. Briggs [the adjuster for respondent] didn't honor that visit, so he sent me back to the orthopedic doctor and he released me.”

Claimant said she probably asked Mr. Briggs to send her to a different doctor after Dr. Maline released her but went on her own to see Dr. Yakin at Advanced Orthopedics. (TR.36) Claimant agreed that Dr. Yakin's record says “injury was 1-9-21. Numbness started 2-22-21. Became worse on March 9.” She did not know that the EMG nerve conduction test showed no cubital tunnel syndrome. (TR.37) Claimant testified she sees her family physician once a month and asked to be put on short-term disability because of the way her hepatitis medicine made her feel. She denied telling her doctor that she had a “kind of burning sensation due to the medicine.” Claimant said there is no mention of her Workers' Compensation injury with her primary care physician because he did not treat her for that. Her family doctor is treating her for hepatitis C, insomnia, arthritis, and anxiety, TMJ pain, depression, panic attack, Cluster B personality disorder, mood disorder, and nightmares, although claimant denies that she had a Cluster B personality disorder but does have post-traumatic stress disorder from an abusive marriage. (TR.39)

When asked why a record from June 15 was the only mention of neck pain in her medical records, claimant denied that was correct. She said the physical therapist had her pick up a box off the floor filled with weights and when she lifted with both arms, she had neck and shoulder pain on

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the right side of her neck. (TR.40) On redirect examination, claimant was shown a physical therapy referral from January 27, 2021 which lists a diagnosis of “pain in joints of right hand, pain in right wrists, stiffness of right hand, not elsewhere classified; stiffness in right wrist, not elsewhere classified.”

Review of the Medical Records

Claimant presented medical records from her medical providers following her compensable injury to her right ring finger. Respondent’s medical exhibits largely duplicated claimant’s exhibits but added three reports from claimant’s family physician, Dr. Kenneth Poemoceah at the Gravette Clinic from visits dated February 23, 2021, June 10, 2021, and June 22, 2021. Respondent had a more complete record from Dr. David Yakin at Advanced Orthopedic Specialist from April 21, 2021 than that provided by claimant for that visit. Respondent also included records from Dr. Poemoceah from June 2020 through December 2020, all which predated claimant’s compensable injury. These records have been reviewed and will be discussed below.

Claimant’s first record was from MedExpress in Bentonville on January 13, this record verifies what claimant testified to regarding going to the emergency room on January 11, 2021, where the focus of the exam was on claimant’s injured finger. Claimant was given a lifting restriction of one to five pounds with her right hand and instructed to follow up in a week. (CL.X.1-4) She returned on January 20 for a follow up reporting that she was still having pain in her right ring finger and had “noticed some on and off pain in elbow and right wrist on occasion since injury. Not sure if it is nerve related. Denies any numbness/tingling in fingertips.” The physician’s assistant that saw claimant did some range of motion test which were in normal range but noted that the right lateral epicondyle was tender to palpation. Claimant was instructed to return in a week for follow up and her restriction on her right arm remained at one to five pounds. (CL.X.5-8)

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On January 27, 2021, claimant began physical therapy at SERC and was diagnosed with pain and stiffness in her right hand and right wrist. It was noted that claimant had “severe guarding of the effected UE” (CL.X.9) During the evaluation of her wrist, claimant demonstrated significantly less range of motion in her right arm than she did her left. (CL.X.11-13)

During her follow up visit at MedExpress on January 29, 2021, claimant again reported “intermittent buzzing in her right wrist and elbow” and requested a referral to an orthopedic doctor. (CL.X.15) The physical therapy notes of February 12, 2021, continued to show diminished range of motion in claimant’s right arm as compared with her left. (CL.X.19-20)

On February 16, 2021, claimant was seen by Dr. Michael Maline. While Dr. Maline noted that claimant reported a “going to sleep” sensation in her arm, it appears that Dr. Maline focused his attention solely on the injury to claimant’s right ring finger. (CL.X.23-24)

Claimant returned to physical therapy on February 24, continuing to complain of issues with the right wrist. According to this report, “Dr. Maline wouldn’t evaluate her wrist because it wasn’t on the paperwork. She is having difficulty lifting patients at work. Hard to turn knobs on doors.” (CL.X.31) Claimant continued to report pain in her “right ulnar aspect of forearm with supination and pronation with resistance.”(CL.X.32) Consistent with claimant’s statement that Dr. Maline wasn’t treating anything other than her finger, Dr. Maline released claimant to full duty with no restrictions despite the following entry in his March 10, 2021, record: “We did discuss that the nerve-type pain she is experiencing should be directly related to her sustaining a smash injury to her finger.” (CL.X.37)

After respondent informed claimant that it would pay no more medical benefits, claimant went to Advanced Orthopedic Specialist to see Dr. David Yakin, with her first visit being on April 21, 2021. Dr. Yakin reported that claimant advised him “injury was January 9, 2021. Numbness

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started February 22, 2021 but became worse on March 9, 2021. EMG to be performed and then follow up with Dr. Yakin. Patient may return to work but not lift more than 15 pounds.” Dr. Yakin apparently suspected a cubital tunnel syndrome in claimant’s right arm. (CL.X.45)

Claimant returned to Advanced Orthopedic Specialist and saw Dr. Kenneth Hagen. The EMG ordered by Dr. Yakin had been performed but a copy of the results was not included in the exhibits. However, Dr. Hagan said under the impressions: “possible early C5 radiculopathy. Otherwise, normal EMG. Order C-spine MRI to rule out compressive pathology on the C5 nerve root.” (CL.X.49) On May 10, she returned to Advanced Orthopedic Specialists and saw Dr. Yakin who said in his note “EMG is negative. Patient may have early C5 radiculopathy as per Dr. Hagen. An MRI for cervical spinal need to be ordered as per Dr. Hagen. I believe she still has symptoms of cubital tunnel syndrome spite (sic) the normal nerve conduction study. I would recommend her sleeping in a cubital tunnel night splint. She can follow up in 2 or 3 months guards (sic) to that.” (CL.X.52)

On May 28, 2021, claimant returned to MedExpress to see Dr. Ryan Hueter, attempting to get back into physical therapy under the original workers’ compensation claim. However, it appears that the workers’ compensation claim was not reopened as respondent’s exhibit one does not include a payment for this visit.

On June 15, 2021, claimant returned to Advanced Orthopedic Specialist to see Dr. Hagen. Under the impression/plan, Dr. Hagen stated “continued right sided are pain after work injury. MRI would see 3–4-disc degeneration. Independently reviewed. Agreed with rads. Recommend restart of PT for radicular pain and DDD.” (CL.X.55)

The final chart entry from Advanced Orthopedic was on August 11, 2021, where a positive Tinel’s test was noted. (CL.X.58) This record includes an explanation of what can cause cubital

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tunnel syndrome: “Cubital tunnel syndrome is caused by compression on the ulnar nerve at the elbow. It may result from trauma, surgery, malignancy, swelling, infection, toxic exposure or inadequate blood supply.” Dr. Yakin restricted her lifting to no more than ten pounds (CL.X.59) and concluded with this note “despite a negative EMG, Cheslie continues to have ulnar nerve symptoms. The cubital tunnel splint at night has not helped her. I would recommend an endoscopic cubital tunnel release with possible subcutaneous nerve transposition if there is subluxation of the ulnar nerve.” (CL.X.60)

As noted in the introduction of this section, much of respondent’s exhibit number two was cumulative to that which was in claimant’s exhibits number one; those portions which were not cumulative did not add any information to assist me in deciding this claim. Respondent’s number three were medical records from June 2020 to December 2020 from her personal physician. There was a single mention of numbness in claimant’s right arm (at an unspecified location on the arm) in the July 9, 2020 record (R.X.3,4), which was eight days after claimant had a total hysterectomy (R.X.3,5). There is no other mention of numbness in claimant’s right arm in that record and no treatment for the numbness was offered. The remaining records are not helpful in determining if claimant needs additional medical care for her January 9, 2021, compensable injury.

ADJUDICATION

In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark.

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App. 450, 384 S.W. 3d 630.

It was stipulated there was a specific incident on or about January 10, 2021, in which claimant right ring finger was injured when it was smashed in the locking mechanism on a wheelchair. At the time of the injury, claimant was assisting a resident of respondent's facility into the chair. Claimant required medical services as a result of her finger injury. Thus, three of the four elements of proof have been clearly satisfied.

The points of contention between the parties boil down to whether claimant has established that there are objective medical findings that her finger injury caused additional problems in her right upper extremity and neck, and if she is entitled to temporary total disability benefits after she was terminated from respondent. These are three separate issues and will be addressed individually.

The right upper extremity injury claim:

The records are clear that claimant mentioned she was having difficulties with her right elbow and wrist on her January 20, 2021 visit to MedExpress, and it was noted that the right lateral epicondyle was tender to palpation during that visit. On her next visit on January 29, 2021, claimant reported an intermittent "buzzing" in her right wrist and elbow. In the addendum to the report generated from that visit, the referral to Ozark Agility Center contained a mention of "ulnar nerve contusion."

While mentioning the problems claimant related to him about her wrist and arm, the reports from Dr. Maline focused on the injured finger, which he pronounced fully healed on March 9, 2021. From that point, respondent's exhibit one demonstrates that it paid for four additional physical therapy sessions, but no visits with a physician were authorized for any other issue claimant was having after the accident on January 9, 2021.

The law requires that the employer shall promptly provide for an injured employee such

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medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a). My reading of the evidence in this case is that the respondent took the position that anything involving something other than the single smashed finger was not its responsibility. Claimant contends that the cubital tunnel syndrome diagnosed by Dr. Yakin is connected to the compensable finger injury.

"When the primary injury is shown to have arisen out of and in the course of employment, the employer is responsible for any natural consequence that flows from that injury." *Nichols v. Omaha Sch. Dist.*, 2010 Ark. App. 194, 374 S.W.3d 148. "However, for this rule to apply, the basic test is whether there is a causal connection between the injury and the consequences of such. *Id.* The burden is on the employee to establish the necessary causal connection." *Id.* I find claimant established by a preponderance of the evidence that her cubital tunnel syndrome is causally connected to the crush injury to her right ring finger.

A claimant is not required to establish the causal connection between a work-related incident and an injury by either expert medical opinion or objective medical evidence. See *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999). Arkansas courts have long recognized that a causal relationship may be established between an employment-related incident and a subsequent physical injury based on evidence that the injury manifested itself within a reasonable period of time following the incident so that the injury is logically attributable to the incident, where there is no other reasonable explanation for the injury. *Hall v. Pittman Construction Co.*, 235 Ark. 104, 357 S.W.2d 263 (1962) Claimant's first mention of issues with her the wrist and elbow was recorded at her second visit to MedExpress on January 20, 2021, having noticed that problem in the week before that scheduled visit. I find that is a reasonable amount of time following the incident in which claimant's right ring finger --which is connected to the ulnar nerve (Cl. X. 59) -- was smashed to

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make that complaint logically attributable to that incident.

I reviewed *Melius v. Chapel Ridge Nursing Ctr., LLC*, 2021 Ark. App. 61, 618 S.W.3d 410, and the cases that decision was based upon, *Fred's, Inc. v. Jefferson*, 361 Ark. 258, 206 S.W.3d 238 (2005) and *Estridge v. Waste Mgmt.*, 343 Ark. 276, 33 S.W.3d 167 (2000). While all involved muscle spasms, the reasoning in those cases is instructive to the facts of the present matter. This section from *Melius* was helpful:

“In addition, there is no requirement under Arkansas law that a doctor, physical therapist, or other medical provider actually observe a patient having a muscle spasm before an employee's injury can be compensable. See *Estridge v. Waste Mgmt.*, 343 Ark. 276, 33 S.W.3d 167. In *Estridge*, the supreme court held that straightening of the curve in the spine was an objective finding supporting a back injury because this finding is normally associated with muscle spasm, and the doctor in that case prescribed medication "as needed for muscle spasm." *Estridge*, 343 Ark. at 282, 33 S.W.3d at 171. This was found to be objective evidence of injury with no evidence to the contrary. *Id.* Furthermore, the supreme court held that a doctor would not prescribe medications used for muscle spasms if he or she did not believe that muscle spasms were existent. *Id.*

If prescribing medications for a muscle spasm is objective evidence that a doctor believes the problem existed, then first recommending a cubital tunnel night splint and then invasive surgery for claimant's cubital tunnel syndrome satisfies the requirement that the doctor made an objective finding that the condition was present; to paraphrase the last quoted sentence in *Melius*, a doctor would not recommend first conservative care and then surgery if he or she did not believe the cubital tunnel syndrome was existent.

In its post-trial brief, respondent urged that an EMG-NCV test should be given heavier weight than Dr. Yakin's diagnostic belief. I disagree because Dr. Yakin disagreed. He did not accept the results of that test as the final word about the existence of the cubital tunnel syndrome, and nor do I. Respondent also cited Commission Rule 099.37, correctly quoting it: “nerve conduction

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studies are the recognized standard for the diagnosis of carpal tunnel syndrome.” While that is what the rule says, it is inapplicable to cubital tunnel syndrome cases.¹

As I observed above, respondent took its position about treating only claimant’s finger (as noted above: “Dr. Maline wouldn’t evaluate her wrist because it wasn’t on the paperwork”) without providing her with any medical treatment for her wrist and elbow injury beyond what she was getting at physical therapy. “It is well-settled that a claimant does not have to support a continued need for medical treatment with objective findings.” *Chamber Door Industries, Inc. V. Graham*, 59 Ark. App. 224, 956 S.W. 2d 196 (1997). Since I find it is more likely than not that the injury to the ring finger affected the ulnar nerve, as the physical therapist, Dr. Maline and Dr. Yakin all either suspected or determined, I find she is entitled to return to Dr. Yakin for treatment for the cubital tunnel syndrome he has diagnosed.

The cervical spine injury:

I agree with respondent that claimant failed to prove by a preponderance of the evidence that the problem with her neck was connected to her compensable injury to her finger. In *Walmart vs. Vannvagner, supra* “To require medical proof of causation in every case appears out of line with the general policy of economy and efficiency contained within the workers' compensation law. To be sure, there will be circumstances where medical evidence will be necessary to establish that a particular injury resulted from a work-related incident but not in every case.” (Emphasis added.)

¹ My conclusion as to why claimant’s doctor was unpersuaded by the EMG/NCV results is the same as to why I believe the Commission’s rule about carpal tunnel does not apply to cubital tunnel testing: electrodiagnostic testing for cubital tunnel can miss the existence of the condition. “Ulnar neuropathy at the elbow (UNE) is the second most common entrapment neuropathy. It is diagnosed with electrodiagnostic studies, but they can yield false-negative results...The reasons for false-negative electrodiagnostic results are not always known but may include improper elbow position and ulnar nerve dislocation, which result in inaccurate nerve length measurements. Early or mild ulnar nerve involvement may also explain some false-negative results.” <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2892824/>

Unlike the injury to her forearm and elbow, there was no mention of a problem with claimant's neck in the medical records until five months after the compensable injury; while I can find a causal connection with the smashed finger and the cubital tunnel syndrome in her elbow without medical proof of causation, I cannot extend that to the claim for the cervical disc degeneration at C3-C4.² As there is no medical evidence establishing that claimant's cervical problem resulted from a work-related incident, and as it did not manifest itself for months after the injury to her finger, I find for respondent on this issue.

Claim for temporary total disability:

As recited in the summary of the testimony, claimant worked for respondent until she was terminated on May 5, 2021. She worked as a receptionist for respondent while she was under doctor's care for her finger injury and was still in that position following the release from Dr. Maline. The only evidence presented on this issue was the testimony of claimant:

Q [BY MR. KINDER] Let's talk about your time off of work. Okay? When was your last day to work at Everest?

A It was five days before the 5th, so May 1st. I think it was the Thursday or Friday before I was terminated.

Q What happened?

A I just had a really rough time being in reception because that is where I was put. This is really sucky right now. So I got fired because they didn't want me to work there now. I'm sorry, I forgot what we are talking about.

Q That's fine. So you were terminated from your job. When were you terminated from your job?_

² I considered the cervical disc degeneration at C3-C4 could have been the source of pain in the elbow, much like a L5-S1 herniation can cause pain into one's leg. However, radicular pain into the ulnar nerve begins at C8. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4958381/>

A The 5th.

THE COURT: The 5th of?

THE WITNESS: May. Sorry. May 5, 2021.

Q [BY MR. KINDER]: And the reasoning was because you had a disagreement with your boss; is that right?

A She was going to be my boss that Monday, the following Monday after the last day that I was present at Everest.

Q Were you currently still under doctor's restrictions at this time?

A Yes.

Q And were those the lifting restrictions that we previously discussed?

A Yes.

On cross-examination, claimant testified as follows:

Q [BY MR. WILLIAMS] I am talking about the end of -- you went back to your regular job and then you were offered this clerical full-time job?

A I went back and when I was lifting my patient, my arm just completely went numb, and I couldn't feel anything in my hand. I let the supervisor know and they told me I would lose my job if I left the shift, so I continued to work. I went to the doctor. They told me I cannot be lifting, so then Lexi asked me if I wanted to come and do reception. I believe it was something on like the next week after, maybe a week after that.

Q So you did that a few days?

A Reception?

Q Yes.

A No, I did it for a while.

MR. WILLIAMS: May I approach, Your Honor?

THE COURT: Yes.

Q [BY MR. WILLIAMS]: From your deposition on Page 12 beginning at Line 20, I am going to read this, and you tell me if I have read it correctly. "Did you actually start that full-time job?" Answer: "I went a few days. I was given the full-time position after the injury." Did I read that right?

A Yes. So I was given the full-time job after the injury, yes. I was offered that job after. I was put there temporarily, then they wanted to hire me full time to receptionist.

My impression of her testimony was that claimant did not like being a receptionist; she said, "I just had a really rough time being in reception because that is where I was put." But she did not testify that she could not do that work under the restrictions placed upon her by Dr. Yakin, because those restrictions were recited in his report of April 21, 2021, two weeks before claimant was terminated. I believe respondent is correct that the evidence in this case does not support a finding that claimant had a total incapacity to earn wages while being treated by Dr. Yakin. Claimant may have had a disagreement or personality clash with the person that was about to become her supervisor, but that does not equate to the necessary incapacity to earn wages that claimant is required to show on this issue.

ORDER

Claimant has met her burden of proving by a preponderance of the evidence that she sustained a compensable injury to her right upper extremity as a result of the injury to her right ring finger on January 9, 2021.

Claimant has met her burden of proving by the preponderance of the evidence that she is entitled to additional medical treatment for his right upper extremity injury as directed by Dr. Yakin.

Claimant has failed to meet her burden of proving by a preponderance that she suffered a cervical spine injury as a result of the injury to her right ring finger on January 9, 2021.

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Claimant has failed to meet her burden of proving by a preponderance of the evidence that she is entitled to temporary disability benefits from May 5, 2021, through July 26, 2021.

Pursuant to A.C.A. § 11-9-715(a)(1)(B)(ii), attorneys fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." As no indemnity benefits have been awarded in this matter, no attorney's fee is due at this time. Claimant's attorney is free to voluntarily contract with medical providers pursuant to A.C.A. § 11-9-715(a)(4).

Respondent is responsible for paying the court reporter her charges for preparation of the transcript in the amount of \$ 499.80.

IT IS SO ORDERED.

JOSEPH C. SELF
ADMINISTRATIVE LAW JUDGE