

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. G902334

JESSICA WILLIAMS, Employee

CLAIMANT

OK FOODS, INC., Self-Insured Employer

RESPONDENT

OPINION FILED OCTOBER 26, 2022

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by MICHAEL L. ELLIG, Attorney, Fort Smith, Arkansas.

Respondents represented by R. SCOTT ZUERKER, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On October 3, 2022, the above captioned claim came on for hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on August 17, 2022 and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #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 the within claim.
2. The employee/employer relationship existed between the parties on March 1, 2019.
3. The claimant was earning sufficient wages to entitle her to compensation at the weekly rates of \$326.00 for total disability benefits and \$244.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's bilateral arms and hands as a result of cumulative trauma on or about March 1, 2019.
2. Claimant's entitlement to medical treatment.
3. Claimant's entitlement to temporary total and/or temporary partial disability benefits from March 7, 2019 through a date yet to be determined.
4. Attorney's fee.

The claimant contends she sustained a compensable injury to her arms, wrists and hands that occurred during her employment with respondent and was a result of her employment activities. She also contends she has received reasonably necessary medical treatment for those injuries and that additional medical services have been recommended, which are also reasonably necessary. She also contends that her compensable injuries have resulted in temporary total or temporary partial disability from March 7, 2019 until a date yet to be determined. She seeks the statutory attorney's fee on all appropriate benefits.

The respondent controverts this claim in its entirety.

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 witness and to observe her 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 a pre-hearing conference

conducted on August 17, 2022 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of carpal tunnel syndrome on or about March 1, 2019.

3. Claimant has failed to meet her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment after January 4, 2021.

4. Claimant has failed to prove by a preponderance of the evidence that she is entitled to any temporary total disability benefits or temporary partial disability benefits as a result of her compensable injury.

FACTUAL BACKGROUND

The claimant is a 38-year-old woman who is a high school graduate. She began attending college at Arkansas Tech-Ozark in August 2022.

Claimant began working for respondent in August 2017. She testified that her initial job was packing boxes which required her to take product such as chicken nuggets in a bag from a conveyor line and pack the bags into boxes. She was also required to take cardboard boxes that were flat and bend them into shape before taping the box together. Claimant would then take the box to a person on the line who was packing the chicken.

Claimant testified that at some point she began having problems with numbness, tingling, and sharp shooting pain in her arms and hands. Claimant reported those problems to the company nurse and to her supervisor. Claimant testified that in

response to her complaints:

They would take me off the line, send me to the nurse's office. She would begin to make me place my hands there for maybe 10, 15 minutes, give or take. I would have to let the wax harden. I would have to peel the wax off. Then she would proceed to put - - slab my arms down in Biofreeze. Then after that, she would proceed to just wrap it up, my arms up in ACE bandages, and send me back on the line.

On March 7, 2019, claimant was terminated by respondent following a disagreement which included claimant accusing someone of sexual harassment. Claimant admitted that she was not awarded unemployment compensation benefits after a finding that she was terminated for cause.

Approximately one month after her termination claimant sought medical treatment for bilateral arm pain at the emergency room at Eastern Oklahoma Medical Center. The medical record contains a history of claimant's pain beginning while working in a chicken plant. Claimant was diagnosed with degenerative joint disease/arthritis and was treated with medication and instructed to receive follow-up care from her primary physician.

On April 16, 2019, claimant sought medical treatment from Dr. Rogow, her primary care physician, for hand pain caused by repetitive movement. Dr. Rogow diagnosed claimant's condition as carpal tunnel syndrome as well as derangement of the shoulders, neuropathy, and probable degenerative joint disease. Dr. Rogow ordered x-rays of the claimant's hands, wrists, and shoulders as well as an EMG study.

Claimant was sent by respondent for medical treatment with Dr. Holder who evaluated the claimant on April 25, 2019. Dr. Holder indicated that he suspected

claimant suffered from carpal tunnel syndrome and he also ordered nerve conduction studies.

Those nerve conduction studies were performed by Dr. Tonya Phillips, a neurologist, on May 1, 2019, and were read as indicative of mild carpal tunnel syndrome of the bilateral upper extremities. Claimant returned to Dr. Holder on May 3, 2019, at which time he referred claimant to a hand surgeon for evaluation and treatment. He also noted that the cause of claimant's problems was related to her work activities and indicated that claimant could continue performing her regular job duties.

On June 3, 2019, claimant was seen by Dr. Eric Heim who noted that nerve conduction studies had revealed mild to moderate bilateral carpal tunnel syndrome. He further noted that claimant's subjective symptoms were more severe than the test results. He also noted the following:

At very beginning of encounter she requests more narcotics and requests benzodiazepines and requests antidepressants. She states that she does not need any other treatment or surgeries but needs more medications. Reports that she is here to obtain more medications.

In addition, Dr. Heim also stated that he discussed normal treatment options for carpal tunnel syndrome ranging from bracing to injections to surgical intervention. He noted that surgical intervention was reserved for those instances when a patient could not obtain enough relief with non-operative methods to provide full function with little to no pain. He noted that claimant had reported that she had tried braces occasionally but had not given them "full attempt." He then stated:

This is my recommendation. Her subjective symptoms are not really consistent with her objective findings on

nerve testing nor exam. She states she does not want any surgery. She reports she is here for medications. I politely informed her that I am actually the surgeon and she was referred to discuss treatment of her carpal tunnel by methods other than controlled substances. She states that she has done a lot of research and that she is fully aware that carpal tunnel surgery only worsens people. I informed her that this is actually incorrect. She does appear to have done a lot of research on medications that she may be able to obtain for pain complaints. She has not tried Gabapentin and does ask about this medicine as well. I told her in a 34-year-old we typically would treat with braces, injections or surgery and the results of Gabapentin were mixed. She can try this if she would like. She reports that she would like to get more medications from her primary care physician. If she would like to try Gabapentin and this may be appropriate. She does not appear interested in my opinion whatsoever today. I will have her follow-up with her primary care physician as she is requesting. (Emphasis added.)

Thereafter, claimant returned to Dr. Rogow for treatment which included pain medications. Claimant eventually returned to Dr. Heim on November 11, 2020. His medical report of that date indicates that claimant stated that her carpal tunnel syndrome is worsening and she would like to discuss other options including surgery. Dr. Heim indicated that he would schedule claimant for a right carpal tunnel release.

Before the surgery was performed, claimant underwent additional diagnostic testing by Dr. Miles Johnson on December 14, 2020. That testing was interpreted as normal with no evidence of carpal tunnel syndrome.

ASSESSMENT: Normal electrodiagnostic study of the bilateral upper extremities. There is no electrodiagnostic evidence of radiculopathy, plexopathy, generalized peri-

pheral neuropathy or peripheral nerve entrapment syndrome. Specifically no evidence of carpal tunnel syndrome. (Emphasis added.)

Following the test results revealing no evidence of carpal tunnel syndrome, claimant returned to Dr. Heim on December 14, 2020 and he performed a carpal tunnel cortisteroid injection on the right side.

Thereafter, claimant returned to Dr. Heim on January 4, 2021 who noted that while claimant had subjective complaints of carpal tunnel syndrome she did not have objective findings but instead had a normal examination. He further stated:

At this point she does not have any objective findings of a nerve problem here including her NCS. She is slightly frustrated that her second study was WNL but with this study and with my exam findings I only have the subjective findings and for this I do not recommend surgery for the patient. The expected benefits of any surgical intervention such as carpal tunnel release does not out weigh the risk of having surgery.

Respondent has not paid for any medical treatment since claimant's evaluation by Dr. Heim on January 4, 2021. Indeed, respondent has now controverted this claim in its entirety. Claimant has continued to seek medical treatment for various complaints including her arms and hands as well as for her neck and back. This treatment has been with Lotus Medical and has consisted of medication as well as recommendations for a cervical MRI and nerve conduction testing. Claimant has filed this claim contending that she suffered an injury to her bilateral arms and hands as a result of cumulative trauma on or about March 1, 2019. She seeks payment of medical treatment as well as temporary total or temporary partial disability benefits from March 7, 2019

through a date yet to be determined as well as a controverted attorney fee.

ADJUDICATION

Claimant has been diagnosed as suffering from carpal tunnel syndrome. Carpal tunnel syndrome is a gradual onset injury and it is not necessary that claimant prove that her injury was caused by rapid repetitive motion. *Kildow v. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W. 2d 190 (1998). A claimant seeking workers' compensation benefits for a gradual onset injury must prove by a preponderance of the evidence that: (1) the injury arose out of and in the course of her employment; (2) the injury caused internal or external physical harm to the body that required medical services or resulted in disability or death; and (3) the injury was a major cause of the disability or need for treatment. A.C.A. §11-9-102(4)(A)(ii) and (E)(ii). Furthermore, a compensable injury must be established by medical evidence supported by objective findings. A.C.A. §11-9-102(4)(D).

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of carpal tunnel syndrome as a result of her job activities with the respondent. Claimant testified that at some point in time prior to March 1, 2019, she began having problems with numbness, tingling, and sharp shooting pain in her arms and hands while performing her job activities. Claimant testified that she reported those problems to the company nurse and to her supervisor. In response, claimant received treatment from the company nurse. Claimant was terminated by the respondent on March 7, 2019 for

unrelated reasons and sought medical treatment at an emergency room before seeking medical treatment from her primary care physician and then from Dr. Holder. Dr. Rogow, claimant's primary care physician, as well as Dr. Holder, the physician chosen by the respondent, both diagnosed claimant's condition as bilateral carpal tunnel syndrome. This diagnosis was confirmed by nerve conduction studies on May 1, 2019.

As a result of those studies, Dr. Holder on May 3, 2019 referred claimant to Dr. Heim for evaluation and treatment. Dr. Holder indicated that the cause of claimant's problem was related to her work activities. Dr. Heim diagnosed claimant's condition as carpal tunnel syndrome and he referred claimant back to her primary care physician, Dr. Rogow, for treatment. Claimant treated with Dr. Heim until she requested surgery which Dr. Heim scheduled. The surgery was canceled after a second nerve conduction study revealed no evidence of carpal tunnel syndrome.

I find based upon the foregoing evidence, that claimant has proven that her injury arose out of and in the course of her employment with respondent and that it caused internal physical harm to the body which required medical services. Furthermore, I find that the injury was the major cause of claimant's need for medical treatment and that she has offered objective findings establishing an injury. While a second nerve conduction study on December 14, 2020 revealed no evidence of carpal tunnel syndrome, the initial study on May 1, 2019 did show mild to moderate carpal tunnel syndrome of the bilateral upper extremities. Based upon this evidence, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome.

As previously noted, the respondent initially accepted claimant's injury as

compensable and paid for medical treatment through January 4, 2021. On January 4, 2021, Dr. Heim noted that while claimant had subjective complaints she no longer had any objective complaints but instead had a normal examination. As a result, he did not recommend any surgical treatment. Since that time, claimant has continued to receive treatment for various conditions and complaints including her upper extremities from Dr. Rogow as well as from physicians at Lotus Medical. A review of those medical records indicates that there is some question as to whether claimant's bilateral upper extremities complaints are related to her neck. Claimant acknowledged at the hearing that she had been involved in two motor vehicle accidents. Accordingly, claimant's treating physicians have recommended an MRI scan of her cervical spine.

There is also an indication that claimant has complaints involving her upper extremities as a result of her breasts. A medical report from Vanessa Lee, APRN-FNP dated January 14, 2021 indicates that claimant was awaiting referral for a breast reduction which had caused her back pain for the last ten years. That report also notes that claimant has shoulder pain with pain in her arms as a result of this condition.

In addition, it is important to note that following her termination with respondent on March 7, 2019, claimant has worked for a number of other employers, all of which required the use of her hands. Claimant testified that beginning in July 2019 she worked at the Roadrunner Convenience Store and in October 2019 began working for In Field Strategies canvassing door to door for approximately one month. Thereafter, claimant worked as a cashier at Long John Silver's until she along with various other employees were laid off due to Covid. Claimant also worked at Andy's Frozen Custard, E-Z Mart Convenience Store, and Newk's Eatery.

Claimant has the burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable carpal tunnel syndrome. Based upon the second nerve conduction study test which was read as normal with no evidence of carpal tunnel syndrome, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury subsequent to January 4, 2021, the date she was last evaluated by Dr. Heim.

I also find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she is entitled to any payment of temporary total or temporary partial disability benefits from March 7, 2019 through a date yet to be determined. First, it should be noted that with respect to March 7, 2019, that is the date claimant was terminated by respondent for reasons unrelated to her compensable injury. Medical records from Dr. Holder dated May 3, 2019 indicate that he was of the opinion that claimant could perform her regular duty with no restrictions. In fact, shortly after that visit with Dr. Holder, claimant obtained her job working at the Roadrunner Convenience Store. As previously noted, claimant has worked for several employers since her termination with respondent.

A claimant who suffers a scheduled injury is entitled to temporary total disability benefits during her healing period or until she returns to work. A.C.A. §11-9-521(a); *Wheeler Construction Company v. Armstrong*, 73 Ark. App. 146, 41 S.W. 3d 822 (2001). However, the claimant's "failure to return to work must be causally related to the injury." *Foster v. Tyson Poultry*, 2013 Ark. App. 172, 426 S.W. 3d 563 citing *Fendley v. Pea Ridge School District*, 97 Ark. App. 214, 216-17, 245 S.W. 3d 676, 677-78 (2006);

Pettus v. Department of Education, Full Commission Opinion filed November 30, 2011 (G100550).

Here, there is insufficient evidence that claimant's failure to return to work subsequent to March 7, 2019 is causally related to her injury. Instead, on March 7, 2019 claimant was terminated by respondent for reasons unrelated to her injury. While claimant may not have worked for periods of time subsequent to her termination by the respondent, I find insufficient evidence that her failure to return to work during those periods of time was causally related to her compensable injury. Accordingly, I find that claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total or temporary partial disability benefits as a result of her compensable carpal tunnel syndrome.

AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of bilateral carpal tunnel syndrome while employed by respondent. Claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury subsequent to January 4, 2019. In addition, claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total or temporary partial disability benefits as a result of her compensable injury.

Respondent is liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$480.45.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE