

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H001453

EDWARD S. WRIGHT, Employee

CLAIMANT

P.A.M. TRANSPORT, INC., Self-Insured Employer

RESPONDENT

OPINION FILED DECEMBER 8, 2021

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

Claimant appearing *pro se*.

Respondent represented by DAVID C. JONES, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On November 17, 2021, the above captioned claim came on for hearing in Springdale, Arkansas. A pre-hearing conference was conducted on September 15, 2021, and an amended pre-hearing order was filed on October 22, 2021. A copy of the amended 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 from May 16, 2016 through June 17, 2019.
3. The respondent has controverted this claim in its entirety.

At the time of the hearing the parties agreed to stipulate that claimant earned an average weekly wage of \$839.84 which would entitle him to compensation at the rates of

\$560.00 for temporary disability benefits and \$420.00 for permanent partial disability benefits.

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

1. Compensability of claimant's bilateral wrist injuries.
2. Medical.
3. Temporary total disability benefits.
4. Notice.
5. Statute of Limitations.

The claimant contends he suffered a compensable injury to his bilateral wrists as a result of his job with respondent. He requests payment of medical and temporary total disability benefits for time missed from work (approximately eight months beginning January 21, 2019).

The respondent contends the claimant did not sustain bilateral wrist injuries during the course and scope of employment or as a result of his work-related activities for the respondent. Specifically, the respondent contends that the claimant cannot meet his burden of proof concerning the "major cause" of his wrist injuries. The respondent also contends that there are no objective medical findings to support compensability and that any objective findings, if noted, cannot be causally connected to the claimant's employment activities for the respondent herein. In the alternative, the respondent contends that if the claimant prevails on compensability, the claimant would not be entitled to any benefits whatsoever until the date of notice of March 10, 2020 by the Form AR-C filing. The respondent further contends that this claim is barred by the Statute of Limitations.

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 a pre-hearing conference conducted on September 15, 2021 and contained in an amended pre-hearing order filed October 22, 2021 are hereby accepted as fact.

2. The parties' stipulation that claimant earned an average weekly wage of \$839.84 which would entitle him to compensation at the rates of \$560.00 for temporary total disability and \$420.00 for permanent partial disability benefits is also hereby accepted as fact.

3. Claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury in the form of bilateral carpal tunnel syndrome while employed by respondent.

### FACTUAL BACKGROUND

Claimant began working for respondent on May 16, 2016, as an over-the-road long-haul driver. Claimant testified and the medical evidence contains documentary evidence revealing that claimant suffers from a number of physical ailments which are not the subject of this claim. In the course of seeking medical treatment for those conditions which included his bilateral knees, claimant complained of numbness and tingling in his

bilateral arms to Dr. Levine on December 19, 2018. Dr. Levine referred claimant to Dr. Kristof for an evaluation of those complaints with the initial evaluation on March 26, 2019.

In his report of March 26, 2019, Dr. Kristof assessed claimant's condition as cervical radiculopathy and degenerative disc disease of the cervical spine. He also ordered an MRI scan and an EMG nerve conduction study. He noted that claimant was complaining of pain in both his low back and neck with reports of numbness and tingling in his low back, right lateral hip, and bilateral hands. Dr. Kristof indicated that this pain had begun two years earlier.

Claimant underwent the EMG study and in his report of May 2, 2019, Dr. Kristof diagnosed claimant's condition as carpal tunnel syndrome of both the right and left wrist. He indicated that claimant's symptoms were ongoing and significant; therefore, he recommended a carpal tunnel release surgery. Dr. Kristof performed a carpal tunnel release of the claimant's right wrist on June 6, 2019, and on the left wrist on June 20, 2019.

In a return to work note dated July 16, 2019, Dr. Kristof released claimant to return to work as of August 5, 2019. Claimant did not return to work for the respondent, but instead returned to work as a truck driver for other employers. Claimant had previously been terminated by the respondent after exhausting his FMLA leave.

Following his release to return to work by Dr. Kristof, claimant again returned to Dr. Kristof for an evaluation on July 30, 2019. Dr. Kristof indicated that claimant should continue with normal activities using pain as a guide and he should continue hand exercises. He also indicated that if claimant had new pain or symptoms he should call his office to set up an appointment.

Claimant's last visit with Dr. Kristof occurred on November 3, 2020. In his report of that date Dr. Kristof noted that claimant was reporting numbness in his right hand and fingers which radiated through his forearm. He also noted that claimant's numbness was exacerbated at night. Dr. Kristof stated:

After examining the patient and hearing his symptoms, I recommend he proceed by completing a BUE EMG Nerve Conduction Study with Dr. Szymanski. Patient would not like to further evaluate his symptoms. Follow up as needed.

The next medical record containing any complaints involving claimant's hands is from Dr. Keith Santiago dated October 27, 2021 in which claimant was complaining of bilateral hand pain. Dr. Santiago diagnosed claimant's condition as carpal tunnel syndrome and ordered an EMG nerve conduction study.

The latest medical record submitted into evidence is a report from Dr. Asher Smith dated May 17, 2021. That report indicates that claimant had a history of carpal tunnel releases that had initially worked for him; however, claimant had a return of his symptoms and a nerve conduction study was ordered. Dr. Smith indicated that he diagnosed claimant's condition as carpal tunnel syndrome and had attempted a carpal tunnel injection which claimant had not been able to tolerate. As a result, he referred claimant for an ultrasound-guided carpal tunnel injection. Dr. Smith's recommendation was a cortisone injection into the carpal tunnel.

Claimant has filed this claim contending that he suffered a compensable injury in the form of bilateral carpal tunnel syndrome as a result of his job activities with the respondent. He seeks payment of medical benefits as well as temporary total disability benefits for time missed from work.

## ADJUDICATION

Claimant contends that he suffered a compensable injury in the form of bilateral carpal tunnel syndrome as a result of his job activities for the respondent. At the hearing claimant was asked why he believed his bilateral carpal tunnel syndrome was related to his job activities. In response, claimant stated:

THE CLAIMANT: Well, for driving the truck, you hold a steering wheel anywhere from 10 to 12 hours a day. And it's 10 hours - - 11 hours driving, 10 hours sleep, you know, two hours to shower and get cleaned up.

So with P.A.M. Transportation, you are mainly driving for 11 hours, 12 hours a day, take your 10-hour break and you are right back into it. You know, that is every day, seven days a week, until you run out of the hours and then you take a 34-hour break, and that's about a day and a half, 34 hours, and then you are right back into it.

So I was constantly driving in the truck holding the steering wheel, shifting gears, you know, looking left and right as a driver is supposed to, and drop maybe one, two, three - - it all depends on how many trailers they have you to pick up and deliver. And that is a constant job.

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THE CLAIMANT: And holding an 18-inch wheel, you don't always do it with one hand. You have to do it with two hands. And to drop a trailer, if it's not properly dropped, that mean that you have to crank this dolly up to get the trailer either up or down so that you could hook up to it and drive.

So it's a constant driving. I mean constantly. You know, and I did that for the four years I was with them.

Claimant does not contend that he suffered bilateral carpal tunnel syndrome as a result of a specific injury which occurred while employed by the respondent, but rather

that it was a gradual onset injury that occurred over time while he was performing his job duties with the respondent. In *Kildow v. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W. 2d 190 (1998), the Supreme Court recognized that carpal tunnel syndrome constitutes a gradual onset injury. Therefore, claimant is not required to prove that his injury was caused by rapid repetitive motion. However, the claimant must still prove (1) that his bilateral carpal tunnel syndrome arose out of and in the course of his employment; (2) his injury caused internal or external physical harm to his body that required medical services or resulted in disability; and (3) the injury was the major cause of the disability or need for treatment. A.C.A. §11-9-102(4)(A)(ii)(E)(ii). In addition, claimant must offer medical evidence supported by objective findings establishing his injury. 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 failed to meet his burden of proof. Specifically, I find that claimant has failed to prove by a preponderance of the evidence that his bilateral carpal tunnel syndrome arose out of and in the course of his employment with the respondent.

Claimant testified that he believed that his bilateral carpal tunnel syndrome is causally related to the job duties he performed for the respondent while working as an over-the-road truck driver. This included holding the steering wheel, shifting gears, and dropping trailers.

As previously noted, claimant mentioned numbness in his hands to Dr. Levine on December 19, 2018. As a result, Dr. Levine referred claimant to Dr. Kristof for further evaluation. Dr. Kristof ordered an EMG nerve conduction study and diagnosed claimant's condition as bilateral carpal tunnel syndrome. He also performed two carpal tunnel

releases on June 6, 2019 and on June 20, 2019. Notably absent from the medical reports of Dr. Levine and Dr. Kristof is any mention of claimant's hand complaints being related to his employment. There is no indication in the medical reports of either Dr. Levine nor Dr. Kristof that claimant ever related his hand complaints to his job duties with the respondent.

As previously noted, claimant was eventually released by Dr. Kristof and returned to see Dr. Kristof on two occasions still complaining of pain in his hands on June 30, 2019 and November 3, 2020. There is no mention in Dr. Kristof's report relating claimant's hand problems to his job activities with the respondent. Dr. Kristof recommended another EMG nerve conduction study on November 3, 2020, but indicated that claimant did not want to further evaluate his symptoms.

Claimant also sought medical treatment for his bilateral hands from Dr. Asher Smith on May 17, 2021. Dr. Smith noted that claimant had previously undergone carpal tunnel releases which had initially been beneficial. However, he noted that claimant's symptoms had returned. He recommended a cortisone injection into the claimant's carpal tunnel. He also noted: "He is a truck driver and continues to have worsening symptoms. He has constant numbness in the median nerve distribution."

This is the only reference to claimant's job activities in the medical records in connection with his bilateral carpal tunnel syndrome. First, I note that Dr. Smith's medical report does not specifically relate claimant's condition to his work as a truck driver. Furthermore, and more importantly, I note that claimant did not undergo an evaluation by Dr. Smith until May 17, 2021. This was more than two years after claimant last worked for the respondent in March 2019. (Claimant last worked for respondent in March 2019



before taking FMLA leave. After claimant's FMLA leave was exhausted he was terminated by the respondent in June 2019.) During that two-year period of time, claimant had returned to work as a truck driver for other employers.

While claimant is not required to offer a medical opinion as proof of causation, he must offer proof by a preponderance of the evidence that his bilateral carpal tunnel syndrome arose out of and in the course of his employment with respondent.

In summary, I simply find that claimant has failed to meet his burden of proving by a preponderance of the evidence that he suffered a compensable injury in the form of bilateral carpal tunnel syndrome as a result of his job duties with the respondent. While claimant's job as an over-the-road truck driver did require him to hold a steering wheel, shift gears, and drop trailers, there is insufficient evidence indicating that claimant ever reported any hand problems to the respondent until he filed Form AR-C on March 10, 2020. This was a year after claimant last worked for respondent and after he had undergone two surgical procedures. Furthermore, when claimant initially complained of problems with his hands to Drs. Levine and Kristof, there is no indication that he attributed his hand complaints to his job activities with the respondent. The only mention of claimant's job is contained in a report from Dr. Smith dated May 17, 2021, in which he notes that claimant is a truck driver. This report was written more than two years after the claimant had last worked for the respondent and after he had gone to work for other employers as a truck driver. Based upon the foregoing evidence, I find that claimant has failed to meet his burden of proving by a preponderance of the evidence that his bilateral carpal tunnel syndrome arose out of and in the course of his employment with the respondent.

Having found that claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury in the form of bilateral carpal tunnel syndrome, the issues of notice and the running of the statute of limitations are moot.

ORDER

Claimant has failed to prove by a preponderance of the evidence that he suffered a compensable injury in the form of bilateral carpal tunnel syndrome while employed by respondent. Therefore, his claim for compensation benefits is hereby denied and dismissed.

Respondent is responsible for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$498.05.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE