

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H206753

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| DANIELA GRANA, Employee | CLAIMANT |
| ROCKLINE INDUSTRIES, INC., Employer | RESPONDENT |
| CNA INSURANCE COMPANY, Carrier | RESPONDENT |

OPINION FILED MARCH 13, 2023

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

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

Respondents represented by KAREN H. MCKINNEY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On February 15, 2023, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on November 2, 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/carrier relationship existed among the parties on April 6, 2022.

At the time of the hearing the parties agreed to stipulate that claimant earned an average weekly wage of \$529.94 which would entitle her to compensation at the weekly

rates of \$353.00 for total disability benefits and \$265.00 for permanent partial disability benefits.

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

1. Compensability of bilateral injuries to hands and wrists.
2. Medical.
3. Temporary total disability benefits from May 26, 2022 through a date yet to be determined.
4. Attorney fee.

At the time of the hearing the claimant clarified that she is requesting temporary total disability benefits from May 26, 2022 through the date she returned to work for respondent.

The claimant contends she sustained a compensable injury to her bilateral hands and wrists. She contends she is entitled to medical treatment and temporary total disability benefits from May 26, 2022 through the date she returned to work. Claimant reserves all other issues.

The respondents contend that the claimant did not sustain a compensable injury. After seeking treatment for bilateral wrist pain and undergoing conservative treatment, Dr. Berestnev opined in his May 27, 2022 report that the claimant has elevated ESR and anti-ANA titer suggestive of Lupus and that her current wrist complaints are not work related but the result of her underlying pre-existing condition.

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 November 2, 2022 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable injury to her bilateral hands and wrists.

FACTUAL BACKGROUND

Claimant is a 27-year-old woman who began working for respondent in 2019 as an auxiliary machine operator. Claimant testified that her job required her to rotate her job activities every 30 minutes. She described those various activities as follows:

Q And you have been instructed if someone's not - - if you need to move and there is no one else to come and get you, you have been instructed you are not supposed to work more than 30 minutes doing this job; right?

A Right.

Q So part of the job you said - - are these baby wipes?

A Facial.

Q Facial wipes?

A Facial wipes.

Q Okay. And they come down in little five by five packets individually and they come down. You get two of them. Then you have to move them over to another line to get labeled.

A Yes.

Q And you do that for 30 minutes; right?

A Yes.

Q And then you move on to the next place where you take the facial wipe packets and you put them in a box; right?

A Right.

Q And that is more shoulder movement; isn't it?

A That is the shoulder, but before you get to the shoulder part, you have to set two of them side by side and the next person grabs them and flips both of the packages together. And then the third person basically like - - I want to say fixes them so they won't fall off the line and then you go put them in the box.

Q Okay. So there is three people that are handling the packs; right?

A Yes.

Q And you only can do that, what you are doing, for 30 minutes at a time; right?

A Right.

Q And the only job that you are indicating that you are really - - you are putting them together, so that seems like arm movement; right? A full arm movement and not a wrist movement?

A It would be a wrist movement because you have to set them together.

Q Okay. So you are setting them together?

A Because it comes flat out and you have to set them up straight.

Q Then someone else has to take them and turn them over?

A Right.

Q Again, only 30 minutes; correct?

A Correct.

Q And then someone else moves them into the box?

A Correct.

Q That is arm movement; right?

A Right.

Q And then you have to palletize them?

A Right.

Q And once they are in the box, you have to get them to the pallet?

A Right. Yes.

Claimant also testified that if the machine gets jammed they must open the machine and remove the jam to get the machine working again. Claimant testified that beginning in April 2022 she developed pain, numbness, and loss of strength in her wrist. She stated that she reported these symptoms to her supervisor but he dismissed them.

Medical records indicate that on April 11, 2022 claimant sought medical treatment at respondent's first aid station where she was treated with ice. The records indicate that claimant received treatment in the form of ice on several occasions from the first aid station. According to claimant's testimony, the first medical treatment she received for her wrist was from a chiropractor who "popped" her wrists. Those medical records were not submitted into evidence.

When claimant's complaints continued, respondent referred claimant to Dr. Berestnev for an evaluation. His initial evaluation was on April 20, 2022, at which time he noted that claimant had been having pain in her right wrist since April 6, but did not report it until April 11 and that she had been seeing a chiropractor for those complaints. He noted that claimant attributed her complaints to turning over packages and gradually developing pain in her right wrist. Dr. Berestnev diagnosed claimant's condition as right wrist extensor tendinitis; repetitive use disorder. He recommended that claimant's work place be modified and prescribed a lace-up wrist support. He also indicated that her problems appeared to be related to her work activities.

Claimant returned to Dr. Berestnev on April 27, at which time he noted that claimant's right wrist was about the same and that her left wrist was starting to hurt due to overcompensating. He referred claimant to physical therapy and she apparently had six sessions of physical therapy before returning to Dr. Berestnev on May 18. At that visit Dr. Berestnev noted that claimant had signs of medial neuropathy and ordered an NCV and CT panel.

Claimant's last visit with Dr. Berestnev occurred on May 18, 2022. At that time he indicated that claimant's lab work showed elevated ESR and anti-ANA titer suggestive of lupus. Dr. Berestnev stated that claimant should see her primary care physician and indicated that the cause of claimant's complaints did not appear to be related to her work activities.

On May 31, claimant was seen by Rachel Hudman, APN, who noted: "She reports history of bilateral wrist pain for the past 1 year." Hudman diagnosed claimant with bilateral wrist pain; gave her trial steroid for pain; and took her off work until claimant could

be seen by her primary care physician. Hudman also referred claimant to rheumatology for a further evaluation.

On June 13, 2022, claimant was evaluated by her primary care physician, Dr. Hurtado. He noted that claimant's anti-nuclear factor was positive, but that she had a negative CRP and CCP. He also noted that claimant had a pending rheumatology appointment. With regard to her bilateral wrists, Dr. Hurtado referred claimant for a nerve conduction study/EMG.

Claimant underwent NCV/EMG testing from Dr. Miles Johnson on June 23, 2022, which he interpreted as showing mild bilateral carpal tunnel syndrome with no electrodiagnostic evidence of radiculopathy, plexopathy, generalized peripheral neuropathy or other peripheral nerve entrapment syndromes. Following this testing, claimant returned to Dr. Hurtado on June 24, who referred her to Dr. Mark Allard, orthopedic surgeon, for treatment.

Claimant was evaluated by Dr. Allard on July 7, 2022, and he diagnosed claimant with bilateral carpal tunnel syndrome, prescribed therapy, and the use of a splint. When claimant's condition did not improve he gave her an injection in the wrist on August 11 and on August 24, 2022 performed a right hand carpal tunnel release procedure.

Prior to the surgery by Dr. Allard, claimant was evaluated by Dr. Song who in a report dated August 16, 2022 assessed her as ANA positive but noted that she was clinically not typical for lupus.

Following her surgery, claimant was released to return to work by Dr. Allard without restrictions on September 21, 2022. Claimant did return to work for respondent and had increased pain. Thereafter, Dr. Allard ordered twelve visits of occupational therapy before

releasing claimant with no restrictions as of November 17, 2022.

Claimant has filed this claim contending that she suffered a compensable injury to her bilateral hands and wrists as a result of her employment with respondent. She requests payment of medical benefits, temporary total disability benefits, and a controverted attorney fee.

ADJUDICATION

Claimant contends that she has suffered a compensable injury to her bilateral hands and wrists in the form of carpal tunnel syndrome. 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 her injury was caused by rapid repetitive motion. However, claimant must still prove (1) that her bilateral carpal tunnel syndrome arose out of and in the course of her employment; (2) her injury caused internal or external physical harm to her 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 her 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 her burden of proving by a preponderance of the evidence that her bilateral carpal tunnel syndrome arose out of and in the course of her employment with the respondent.

There is no question that in April 2022 claimant reported complaints of right hand

and wrist pain to the respondent and that she sought medical treatment at the first aid station. In addition, claimant was seen by Dr. Berestnev who initially indicated that claimant's symptoms were related to her employment activities before indicating that her symptoms were not related to her work activities following additional testing. Notably, Rachel Hudman, APN, indicated that claimant had a history of bilateral wrist pain "for the past 1 year." Finally, Dr. Allard in his initial report of July 7, 2022 indicated:

26-year-old right-hand-dominant young lady works at a repetitive manufacturing job comes in with a three-month history of bilateral radial hand numbness and pain.

All of the foregoing evidence would indicate that claimant suffered a compensable injury as a result of her job activities with respondent. However, the reality is that at the same time claimant was working at respondent she was also working for other employers. At the time her complaints began she was not only working for another employer but had also started a business of her own as well.

Claimant began working for respondent in 2019 as an auxiliary machine operator and she has performed this job since that time. Claimant testified that for respondent she worked three days one week and then four the next. Her shift was for 12 hours with three breaks. Claimant's job required her to rotate among various job activities as an auxiliary machine operator every 30 minutes. Claimant performed that job for the remainder of 2019; 2020; 2021; and the first three months of 2022 without any carpal tunnel symptoms. Her problems did not begin until April 2022.

At the same time claimant was working for respondent she was also performing work for other employers which required the use of her hands. These jobs included office

work at Lindsey Management; C & W Properties; and Staffmark. In the performance of this office work she operated a computer and performed 10-key input. In addition, she also worked for Tyson as a machine operator and at Walmart Optical monitoring machinery.

Notably, in December 2021, just five months before April 2022, claimant began working for Famous Footwear as a manager. Claimant testified that as a manager she was responsible for running the cash register, operating a computer, counting money, and monitoring other employees. Claimant performed this work for 20 hours per week and was performing this work in April 2022 at the same time her hand complaints began. Claimant continued performing this work at Famous Footwear until May 2022, after she sought medical treatment for her hand and wrist complaints.

In addition to her jobs at respondent and as a manager for Famous Footwear, claimant also started her own business, MB Creations. MB Creations was crafting type work in which claimant would personalize items such as t-shirts and cups. Claimant began this business in early 2022, shortly before her complaints began. Claimant testified that she would spend one to two hours per week performing this work.

Thus, while claimant did have a job at respondent that required the use of her hands, she had been performing that job for more than two years without any complaints of hand or wrist pain. When her complaints began she was also performing work involving the use of her hands as a manager at Famous Footwear (beginning in December 2021) and in her own crafting business (beginning in early 2022). Given this evidence, I do not find that claimant has met her burden of proving by a preponderance of the evidence that her carpal tunnel syndrome arose out of and in the course of her employment with

respondent as opposed to her employment at Famous Footwear or the work she was performing for her own business, MB Creations. To the extent that her treating physicians relate her carpal tunnel complaints to her job activities with respondent, I note that there is no indication that any of those physicians were aware of the other jobs claimant was also performing involving the use of her hands while she was working for respondent.

In summary, claimant has the burden of proving by a preponderance of the evidence that her bilateral carpal tunnel syndrome arose out of and in the course of her employment with respondent. While claimant's job with the respondent did require the use of her hands, at the same time claimant was working for the respondent she was also employed by other employers performing jobs which required the use of her hands. Claimant performed her work for respondent for more than two years without any carpal tunnel complaints. When claimant's problems began in April 2022 she was also working 20 hours per week as the manager of Famous Footwear and was performing crafting work for her own business which she had begun in early 2022. For these reasons, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that her bilateral carpal tunnel syndrome arose out of and in the course of her employment with respondent.

ORDER

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

Respondents are liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$579.95.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE