

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H302799

GISELA GUTIERREZ, Employee	CLAIMANT
TYSON POULTRY, INC., Employer	RESPONDENT
TYNET CORPORATION, Carrier/TPA	RESPONDENT

OPINION FILED DECEMBER 19, 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 JEREMY SWEARINGEN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On November 29, 2023, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on June 21, 2023 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/self-insured employer relationship existed between the parties on June 15, 2022.
3. Respondent has controverted this claim in its entirety.

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

1. Compensability of gradual onset injury to claimant's right wrist and elbow on or about June 15, 2022.

2. Medical expenses.

3. Temporary total disability benefits.

4. Attorney's fee.

5. Notice.

The claimant contends she is entitled to payment of medical treatment for her right wrist and elbow, and to payment of temporary total disability benefits for two weeks during January of 2023. Claimant reserves all other issues.

The respondents contend that claimant has offered no proof at all that she sustained a compensable right wrist or elbow injury. She has provided no objective medical findings of injury or any records whatsoever. Respondent contends that its first notice that the claimant was alleging a compensable right wrist and elbow injuries was the AR-C filed by the claimant's attorney which was received by the respondent on May 3, 2023. Thus, even if the claimant were somehow found to be compensable, respondent would not be liable for any benefits incurred or accrued before the date such notice was received. The claimant has not specified what temporary total disability benefits she is seeking. The claimant has not specified what medical she is seeking.

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 June 21, 2023 and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable gradual onset injury to her right wrist and elbow on or about June 15, 2022.

FACTUAL BACKGROUND

Claimant is a 45-year-old woman who began working in August 2003 for respondent in deboning in its Rogers' plant. At some point in time that plant closed and claimant was transferred to respondent's plant on Berry Street in Springdale. Her job there required her to pull the skin off 50 chicken breasts per minute.

Claimant testified that in mid-June 2022 she began having problems with pain in her right wrist. She stated that she reported the problems to the nurse's station, but an interpreter was not present so she had to communicate with hand signals and was not provided treatment.

As she continued to work the pain radiated from her right wrist up to her elbow and she reported these problems to her supervisor, Maria, who took her to the nurse's station and interpreted for her. Claimant was given cream to apply to her wrist and arm. When claimant's complaints continued, she sought medical treatment from her primary care physician, Dr. John Smiley, who referred her to Dr. Andreas Chen, orthopedic surgeon.

At his initial visit with claimant on October 6, 2022, Dr. Chen prescribed the use of

braces. Dr. Chen noted that claimant suffered from diabetes which was out of control and he could not consider an injection or surgery at that time. On November 15, 2022, Dr. Chen recommended that claimant continue to wear her braces and he also ordered a nerve conduction study. That nerve conduction study was performed by Dr. Miles Johnson on November 30, 2022, and revealed bilateral carpal tunnel syndrome, severe on the right and moderate on the left.

After claimant's diabetes came under control, Dr. Chen performed a carpal tunnel release on claimant's right wrist in January 2023. Claimant was off work for two weeks after her surgery before returning to work for respondent. Claimant testified that she still suffers from pain in her right wrist and elbow.

Claimant has filed this claim contending that she suffered a gradual onset injury to her right wrist and elbow on or about June 15, 2022. She seeks payment of medical expenses, temporary total disability benefits, and a controverted attorney fee.

ADJUDICATION

Claimant contends that she suffered a compensable injury in the form of a gradual onset injury to her right wrist and elbow in mid-June 2022. Claimant has been diagnosed as suffering from right carpal tunnel syndrome and underwent surgery in the form of a carpal tunnel release by Dr. Chen in January 2022. In *Kildow v. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W. 2d 190 (1998), the Arkansas 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 carpal tunnel syndrome arose out of and in the course of her

employment; (2) her injury caused internal or physical harm to the 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 prove by a preponderance of the evidence that her carpal tunnel syndrome is a compensable injury. As noted above, the third requirement for a compensable injury is that the compensable injury be the major cause of the disability or need for treatment. A.C.A. §11-9-102(4)(E)(ii); *Medlin v. Walmart Stores, Inc.*, 64 Ark. App. 17, 977 S.W. 2d 239 (1998). “Major cause” means greater than fifty percent (50%) of the cause. §11-9-102(4)(E)ii.

Here, the claimant has a twelve year history of having been diagnosed with diabetes. At the time of her initial visit with Dr. Chen on October 6, 2022 her A1C was greater than 12. In his deposition testimony, Dr. Chen stated the following with respect to that reading.

Q In the October 6th chart dictation, there’s mention of uncontrolled diet. She’s an uncontrolled diabetic with an A1C greater than 12. And why is that, in your opinion, relevant to a discussion of carpal tunnel or upper extremity complaints like this?

A So there are a couple of reasons. One is that diabetes can increase your symptoms or carpal tunnel syndrome. Number two is that I would not intervene on any - - I would not intervene on her care, if her diabetes was uncontrolled, so - - because the risk of infection goes up significantly, if her - - your sugars are uncontrolled.

I would - - that is my way of saying, hey, I would

not operate on her. It also says, hey, I would not give her a steroid injection either.

During the course of his deposition Dr. Chen stated that people who are diabetic are more likely to develop carpal tunnel syndrome. He further noted that diabetes can be an aggravating factor to the inflammation of the medial nerve in the carpal tunnel. Most significantly, Dr. Chen was unwilling to state within a reasonable degree of medical certainty whether claimant's carpal tunnel syndrome was the result of job activities as opposed to diabetes.

Q So as we sit here today, with Ms. Gutierrez specifically, is there any way - - and let me preface this by saying, would it be correct to say that Ms. Gutierrez gave you a history of noticing problems with her hands when she used them a lot at work?

A Ask that question again.

Q Sure. And I'm going back to the very, very - -

A Yes.

Q - - intake form. She said - - "What makes your pain worse?" "Work."

A Correct.

Q And she has a hand-intensive job. Would it be fair to say that she has, at least, indicated that her symptoms she feels are worse when she's using her hands at work?

A Correct.

Q Would it also be correct to say that there's a temporal proximity between her blood sugars being out of control and her presentation for treatment of those symptoms, both in terms of coming - - showing up, and also reporting severity?

A Yes.

Q Is there any way to state within a reasonable degree of medical certainty which of these causes or potential causes is the cause of her carpal tunnel syndrome, as opposed to the symptoms just manifesting at a given time?

A It is not possible to say.

Q Would it be fair to say that it's not surprising that she has symptoms of pain and these carpal tunnel symptoms when she's using her hands a lot?

A It is fair to say that. Correct.

Q Because - - and then, if she has carpal - - underlying carpal tunnel syndrome from whatever reason, it would be - - would it be expected for her to have those symptoms manifest when she's using her hands a lot?

A Yes.

Q Would it also be expected that - - if her blood sugar becomes more out of control, getting into those upper levels, like 250, 300, would it also be expected for her to experience symptoms from her carpal tunnel syndrome at those times where her blood sugar is way out of control?

A Yes.

Q Would it be fair to say that correlation doesn't necessarily mean causation?

A Correct.

(Emphasis added.)

Therefore, Dr. Chen was unable to state within a reasonable degree of medical certainty whether claimant's carpal tunnel syndrome was the result of her job activities or

her uncontrolled diabetes. I find that Dr. Chen's opinion is credible and entitled to great weight. Based upon his testimony, I find that claimant has failed to prove by a preponderance of the evidence that her job activities for the respondent were the "major cause" of her disability or need for treatment. Given Dr. Chen's testimony, claimant has failed to prove by a preponderance of the evidence that her job duties were greater than 50% of the cause of her disability or need for medical treatment. Accordingly, I find that claimant has failed to meet her burden of proving by a preponderance of the evidence that she suffered a compensable in the form of carpal tunnel syndrome.

I also note that claimant testified that she has complaints of tingling in her pinky and ring finger on both hands. According to Dr. Chen's testimony, claimant made those complaints at the time of her October 26, 2023 visit. He indicated that those complaints would not be related to carpal tunnel, but instead would be related to cubital tunnel. Even if all other elements of compensability were proven for cubital tunnel such as rapid repetitive motion, I note that claimant has the burden of offering objective medical findings establishing an injury. No objective findings have been offered establishing cubital tunnel syndrome. In fact, according to Dr. Chen, the initial nerve conduction study revealed no evidence of cubital tunnel at that time. While Dr. Chen indicated that he might request a repeat nerve conduction study test, at the time of the hearing there were no objective findings establishing an injury in the form of cubital tunnel.

Likewise, claimant made complaints at the time of her office visit in April 2023 involving her right elbow and was diagnosed with lateral epicondylitis. Claimant's treatment included observation. There are no objective findings establishing an injury in the form of lateral epicondylitis in the medical records.

Accordingly, I likewise find that claimant has failed to prove by a preponderance of the evidence that she suffered cubital tunnel syndrome or lateral epicondylitis as a result of her job activities with respondent.

ORDER

Claimant has failed to prove by a preponderance of the evidence that she suffered a compensable gradual onset injury to her right wrist and elbow on or about June 15, 2022. Claimant has failed to establish that her job activities were the major cause of her disability or need for medical treatment. In addition, claimant has failed to offer medical evidence supported by objective findings establishing cubital tunnel syndrome or lateral epicondylitis. Therefore, her 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 \$283.70.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE