

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H206753

DANIELA GRANA,
EMPLOYEE

CLAIMANT

ROCKLINE INDUSTRIES, INC.,
EMPLOYER

RESPONDENT

CNA INSURANCE COMPANY,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED AUGUST 29, 2023

Upon review before the FULL COMMISSION in Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE EVELYN E. BROOKS, Attorney at Law, Fayetteville, Arkansas.

Respondents represented by the HONORABLE KAREN H. McKINNEY, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed March 13, 2023. The administrative law judge found that the claimant failed to prove she sustained a compensable injury. After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved she sustained a compensable bilateral carpal tunnel syndrome injury. The claimant proved that she was entitled to reasonably necessary medical treatment and a period of temporary total disability benefits.

I. HISTORY

Daniela Grana, now age 27, testified that she became employed with the respondents as an Auxiliary Machine Operator in 2019. The claimant testified on direct examination:

Q. And as an Auxiliary Machine Operator, what were your duties?

A. They consist of fixing down machinery, working on the line with packages, putting them into a box, and palletizing them.

Q. Okay. So fixing down machinery, what did you do in that work?

A. If the machinery is jammed up, we go open it up, fix it, get it back up to running for the line so the line won't stop....

Q. So the work that you were doing at Rockline before April of 2022, was that all line work?

A. Yes.

Q. And was it on a line that was moving as you were working on it?

A. Yes. The line is always moving.

Q. Okay. And these different duties that you would do throughout the day, were there ever any duties that did not require the constant use of your hands?

A. No.

The claimant agreed on cross-examination that she also worked for other employers other than the respondents, including Walmart Optical Labs and Famous Footwear. The claimant agreed that she operated a cash register and occasionally counted money while employed with Famous Footwear. Additionally, the claimant agreed that she owned her own business, MB Creations, where she customized T-shirts and cups.

The parties stipulated that the employee-employer-carrier relationship existed on April 6, 2022. The claimant testified on direct examination:

- Q. Now, in April of 2022, what symptoms did you develop?
A. Pain, numbness, loss of strength.
Q. In what area of my body?
A. Of my wrists....The right one first.
Q. Okay. And did you report that?
A. Yes.
Q. Who did you report it to?
A. My supervisor....
Q. Do you recall about how long it was after you reported it that you were sent to a doctor?
A. I want to say two weeks.

The record corroborated the claimant's testimony. The claimant received treatment visits at Conservative Care Occupational Health beginning April 20, 2022. Dr. Konstantin V. Berestnev reported at that time:

Daniela Grana is a 26 year-old female, and employee of Rockline Industries Springdale....
Employer Description of Accident: Ms. Grana states that she has been having on going pain to her right wrist since April 06, 2022 but did not report it until April 11, 2022....
Patient states that she was turning over packages and gradually developed pain in her right wrist. Patient states that she was seen by a chiropractor.
HISTORY OF PRESENT ILLNESS
Daniela's primary problem is pain located in the right wrist. She describes it as aching. She considers it to be medium. The problem began on 4/6/2022. Daniela says that it seems to be intermittent. She has noticed that it is made worse by twisting, lifting. It is improved with muscle cream, ibuprofen. She is currently receiving chiropractic therapy which she finds helpful....
She is working full time on regular duty.
Time with current employer: 2 years.

Dr. Berestnev assessed "Right wrist extensor tendinitis. Repetitive use disorder." Dr. Berestnev's Treatment Plan was "Discussed ergonomic modifications with the patient and the company representative. Best to

modify her workplace with engineering solutions to prevent the need to manually flip boxes to attach a label to the opposite side.” Dr. Berestnev stated, “The cause of this problem appears to be related to work activities....Daniela’s recommended Work Status is Regular Duty.”

Dr. Berestnev signed a Form AR-3, PHYSICIAN’S REPORT on April 20, 2022 and diagnosed “Right wrist tendinitis.” Dr. Berestnev planned conservative treatment and he returned the claimant to unrestricted work.

Dr. Berestnev noted on April 27, 2022, “Patient states that her right wrist is about the same, she is still having pain. Patient states that her left wrist is starting to hurt due to over compensating.” Dr. Berestnev assessed “Right wrist extensor tendinitis. Repetitive use disorder. Now left wrist hurts after she was scraping glue with her left hand....The cause of this problem appears to be related to work activities....Daniela’s recommended work status is Regular Duty.”

The claimant followed up with Dr. Berestnev on May 18, 2022: “Patient states that her wrists are about the same, she is still having pain. Patient has been to 6 sessions of physical therapy.” Dr. Berestnev assessed “Symptoms of median neuropathy....Referral for nerve conduction velocity study....The cause of this problem appears to be related to work activities.”

The claimant followed up with Dr. Berestnev on May 27, 2022:

Daniela Grana is a 26 year-old Female, and employee of Rockline Industries Springdale....

Ms. Grana states that she has been having on going pain to her right wrist since April 06, 2022 but did not report it until April 11, 2022. She has been seeing her Chiropractor....

Patient states that she was turning over packages and gradually developed pain in her right wrist....

Patient states that she feels like both wrists are hurting a little more. Patient states that she does not feel like physical therapy helped....

Daniela's primary problem is pain located in the both wrist (sic)....The problem began on 4/6/2022. Daniela says that it seems to be constant. She has noticed that it is made worse by using them. She feels it is not improving. She is here to review her laboratory studies....

ASSESSMENT

Labwork shows elevated ESR and anti-ANA suggestive of lupus.

Number and Complexity of Problems Addressed: 1 undiagnosed new problem with uncertain prognosis.

TREATMENT PLAN

Needs to see PCP.

MEDICAL CAUSATION

The cause of this problem does not appear to be related to work activities.

RECOMMENDED WORK STATUS

Daniela's recommended work status is Regular Duty....The patient has been released.

Dr. Berestnev diagnosed "1. Other specified disorders of tendon, right wrist" and "2. Other lesions of median nerve, unspecified upper limb."

Dr. Berestnev signed a Form AR-3, PHYSICIAN'S REPORT on May 27, 2022 and diagnosed "Lupus – not work-related....Needs to see her PCP."

The claimant's testimony on cross-examination indicated that she was off work after May 27, 2022. The claimant testified that she sought medical treatment on her own following Dr. Berestnev's release.

Rachel Hudman, APN noted on May 31, 2022, "Pt was diagnosis (sic) with lupus from work after running blood test on Friday. Pt here to discuss diagnosis, wrist pain and headaches." Ms. Hudman assessed "1. Bilateral wrist pain," "2. Anti-nuclear factor positive," and "3. Fatigue."

Dr. Miles M. Johnson provided a Neurological Evaluation/Electrodiagnostic Report on June 23, 2022:

Patient is a 26-year-old right-handed female with a 2 months history of bilateral hand pain, numbness, tingling, and weakness. Symptoms are worse at night or with repetitive activity. Some improvement with braces. Denies any neck pain. Patient has been seen by Dr. Hurtado and is referred for electrodiagnostic testing of the bilateral upper extremities. ...

SUMMARY: Bilateral median and ulnar motor studies are normal. Right and left median ulnar orthodromic latency difference is mildly abnormal. Radial sensory response is normal bilaterally. EMG examination of the bilateral upper extremities is within normal limits.

ASSESSMENT: Mild bilateral carpal tunnel syndrome. There is no electrodiagnostic evidence of radiculopathy, plexopathy, generalized peripheral neuropathy or other peripheral nerve entrapment syndromes.

Dr. Johnson recommended "conservative management with wrist cock-up splints, nonsteroidals, possibly intracarpal corticosteroids."

Dr. Mark Allard began treating the claimant on July 7, 2022:

26-year-old right-hand-dominant young lady works at a repetitive manufacturing job comes in with a 3-month history of bilateral radial hand numbness and pain. Dr. Hurtado has been seeing her and has her in wrist splints which help a little bit. He sent her to therapy which helped a little bit. It does not wake her up much at night, but consistently bothers her at work. She occasionally takes an Advil which helps. It is always her thumb, index and long fingers. She has as much problem with pain as she does with numbness. She got nerve conduction studies with Miles Johnson that showed mild changes. I reviewed that report.

Dr. Allard assessed "Bilateral carpal tunnel syndrome. Her symptoms are certainly worse than her nerve conduction studies would imply. Cervical spine films look normal. We will start with scheduled anti-inflammatory medicine along with her splints."

Dr. Song Zang noted on August 16, 2022, "Pt was referred for +ANA. In concern of lupus." Dr. Zang assessed "1. ANA positive" and noted, "Clinically not typical for lupus. Will do some labs to confirm....The fatigue is more stress related. RTC as needed."

Dr. Allard performed a Right Carpal Tunnel Release on August 24, 2022. The pre- and post-operative diagnosis was "Right carpal tunnel syndrome."

Dr. Allard's assessment on or about September 9, 2022 was "Bilateral carpal tunnel syndrome, status post right carpal tunnel release. Sutures removed today. She can increase her activity as pain allows. I do not think she needs any therapy. She will let us know when she is ready to

go back to work and we can write her a note. I will plan on seeing her here 4 weeks from now for repeat clinical exam. She is leaning toward left carpal tunnel release later in the year.”

Dr. Allard noted on October 6, 2022, “Pt here today 4 wk f/u Rt CTR. Pt states she is doing good, but did notice the pain she was having returned after she went back to work....Surgery date was 08/24/2022.” Dr. Allard assessed “Bilateral carpal tunnel syndrome, status post right carpal tunnel release. She has had some radial wrist pain as she has tried to go back to her repetitive labor job. I thought we might build to get her through this without any therapy, but I will bet occupational therapy helps her get back to work and get her strength back. We will get her in therapy now and I will see her back in 6 weeks for repeat clinical exam. She is still considering left carpal tunnel release later this year.” Dr. Allard provided a WORK STATUS REPORT: “Daniela had an increase in pain following her right hand surgery and missed work Sunday, Monday and Tuesday, October 2-4. She can return without restrictions.”

The claimant received Occupational Therapy visits beginning October 13, 2022.

The claimant testified on direct examination:

Q. And at some point after surgery, did you return to Rockline?

A. Yes.

Q. And do you recall about when that was?

A. October, like the 20 – the 25th, I think.

Q. Okay. Now, when you returned to Rockline, what job did you return to?

A. My same position as Auxiliary.

Q. And is the actual work that you've been doing since you returned to Rockline the same as what you were doing before or is it different?

A. It was the same.

Q. And how did you hand react once you returned to work?

A. They started bothering me again.

Q. Do you feel like your right hand is better than it was before surgery even though you are working again?

A. It is better, but not how I felt before the surgery – or before the hurting or anything.

Q. Okay. Do you intend to have surgery on your left hand at some point?

A. Yes.

A pre-hearing order was filed on November 2, 2022. The claimant contended, "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 to a date yet to be determined as a result of her bilateral wrist and hand injuries. Claimant reserves all other issues."

The respondents contended, "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."

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.

After a hearing, an administrative law judge filed an opinion on March 13, 2023. The administrative law judge found that the claimant failed to prove she sustained a compensable injury. The administrative law judge therefore denied and dismissed the claim. The claimant appeals to the Full Commission.

II. ADJUDICATION

A. Compensability

Act 796 of 1993, as codified at Ark. Code Ann. §11-9-102(4)(Repl. 2012), provides, in pertinent part:

- (A) “Compensable injury” means:
- (ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of employment, if the injury is:
 - (a) Caused by rapid repetitive motion. Carpal tunnel syndrome is specifically categorized as a compensable injury falling within this definition[.]

The Arkansas Supreme Court has recognized that carpal tunnel syndrome is a gradual-onset injury; hence, it is not necessary that the employee prove her injury was caused by rapid repetitive motion. *Freeman*

v. Con-Agra Frozen Foods, 344 Ark. 296, 40 S.W.3d 760 (2001), citing *Kildow v. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W.2d 190 (1998).

A compensable injury must also be established by medical evidence supported by objective findings. Ark. Code Ann. §11-9-102(4)(D)(Repl. 2012). “Objective findings” are those findings which cannot come under the voluntary control of the patient. Ark. Code Ann. §11-9-102(16)(A)(i)(Repl. 2012).

Ark. Code Ann. §11-9-102(4)(Repl. 2012) additionally provides in pertinent part:

- (E) BURDEN OF PROOF. The burden of proof of a compensable injury shall be on the employee and shall be as follows:
 - (ii) For injuries falling within the definition of compensable injury under subdivision (4)(A)(ii) of this section, the burden of proof shall be by a preponderance of the evidence, and the resultant condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment.

Preponderance of the evidence means the evidence having greater weight or convincing force. *Metropolitan Nat'l Bank v. La Sher Oil Co.*, 81 Ark. App. 269, 101 S.W.3d 252 (2003). “Major cause” means more than fifty percent of the cause, and a finding of major cause shall be established according to the preponderance of the evidence. Ark. Code Ann. §11-9-102(14)(Repl. 2012).

An administrative law judge found in the present matter, “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.” The Full Commission does not affirm this finding.

The claimant testified that she became employed as an Auxiliary Machine Operator for the respondents in 2019. The claimant described her work duties as including “fixing down machinery, working on the line with packages, putting them into a box, and palletizing them.” The claimant testified that her work for the respondents required “constant use” of her hands. The claimant testified that she began suffering from pain, numbness, and weakness in her right hand initially beginning in April 2022. The company physician, Dr. Berestnev, began treating the claimant on April 20, 2022 and reported, “Patient states that she was turning over packages and gradually developed pain in her right wrist.” Dr. Berestnev assessed “Repetitive use disorder....The cause of this problem appears to be related to work activities.” Dr. Berestnev returned the claimant to regular duty.

Dr. Berestnev noted during an April 27, 2022 follow-up appointment, “Repetitive use disorder. Now left wrist hurts after she was scraping glue with her left hand....The cause of this problem appears to be related to work activities.” Dr. Berestnev again returned the claimant to regular duty,

and he again noted on May 18, 2022, “The cause of this problem appears to be related to work activities.”

However, Dr. Berestnev stated on May 27, 2022 that diagnostic studies purportedly showed “elevated ESR and anti-ANA suggestive of lupus.” Dr. Berestnev diagnosed “Lupus – not work-related....The cause of this problem does not appear to be related to work activities.” It is within the Commission’s province to weigh all of the medical evidence and to determine what is most credible. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). In the present matter, the Full Commission attaches minimal evidentiary weight to Dr. Berestnev’s modified opinion beginning May 27, 2022 that the claimant’s symptoms were the result of “Lupus.” In this regard, we note Dr. Zang’s opinion on August 16, 2022 that the claimant’s symptoms were “Clinically not typical for lupus.”

It is within the Commission’s sole discretion to determine the credibility of each witness and the weight to be given to their testimony. *General Electric Railcar Repair Servs. v. Hardin*, 62 Ark. App. 120, 929 S.W.2d 667 (1998). An administrative law judge’s findings with regard to credibility are not binding upon the Full Commission. *Roberts v. Leo Levi Hosp.*, 8 Ark. App. 184, 649 S.W.2d 402 (1983). In the present matter, the Full Commission finds that the claimant was a credible witness. We find

that the claimant's symptoms were the causal result of her hand-intensive work for the respondents and were not related to the claimant's other retail or clerical employment. Nor does the probative evidence demonstrate that nonwork-related "Lupus" was the cause of the claimant's problems in her bilateral upper extremities beginning in April 2022.

Dr. Johnson performed objective electrodiagnostic testing on June 23, 2022 and reported, "Right and left median ulnar orthodromic latency difference is mildly abnormal." Dr. Johnson assessed "Mild bilateral carpal tunnel syndrome." Dr. Allard reported on July 7, 2022 that the claimant complained of bilateral hand numbness and pain which resulted from a "repetitive manufacturing job." Dr. Allard assessed "Bilateral carpal tunnel syndrome." Dr. Allard performed a Right Carpal Tunnel Release on August 24, 2022.

The Full Commission finds that the claimant proved by a preponderance of the evidence that she sustained a "Compensable injury" in accordance with Ark. Code Ann. §11-9-102(4)(A)(ii)(a)(Repl. 2012). The claimant proved that she sustained an injury causing physical harm to the body and arising out of and in the course of employment, which was not identifiable by time and place of occurrence, but was caused by bilateral carpal tunnel syndrome. The claimant established a compensable injury by medical evidence supported by objective findings, namely the

electrodiagnostic testing performed by Dr. Johnson. The claimant proved that the compensable injury was the major cause of her disability and need for treatment. The evidence does not demonstrate that the claimant's carpal tunnel syndrome was caused by Lupus or that her symptoms were the result of employment outside of the claimant's work for the respondents.

B. Medical Treatment

The employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a)(Repl. 2012). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2005). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

In the present matter, the claimant proved that she sustained a compensable bilateral carpal tunnel syndrome injury. The claimant proved that the medical treatment of record was reasonably necessary in connection with the compensable injury. Dr. Allard performed a Right Carpal Tunnel Release on August 24, 2022. The claimant testified that, although she continued to complain of symptoms, surgery performed by Dr.

Allard had somewhat reduced the level of pain in her right upper extremity. Post-surgical improvement is a relevant consideration in determining whether surgery was reasonably necessary. *Hill v. Baptist Medical Center*, 74 Ark. App. 250, 48 S.W.3d 544 (2001). The Full Commission finds that surgery performed by Dr. Allard on August 24, 2022 was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). We recognize that the claimant anticipates undergoing a left carpal tunnel release in the future. However, there is not currently a recommendation in the record for such a procedure.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved she sustained a compensable bilateral carpal tunnel syndrome injury. The claimant proved that the medical treatment of record was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The claimant's testimony indicated that she was off work beginning May 28, 2022 and continuing until October 25, 2022. An employee who has suffered a scheduled injury is entitled to receive temporary disability benefits during her healing period or until she returns to work. *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). Dr. Allard provided a WORK STATUS REPORT on October 6, 2022 and stated, "She can return without restrictions." The Full Commission finds that the claimant reached the end of her healing period

no later than October 6, 2022. Temporary total disability benefits cannot be awarded after a claimant's healing period has ended. *Milligan v. West Tree Serv.*, 57 Ark. App. 14, 946 S.W.2d 697 (1997). We therefore find that the claimant proved she was entitled to temporary total disability benefits from May 28, 2022 through October 6, 2022. The respondents are entitled to any appropriate offset in accordance with Ark. Code Ann. §11-9-411(Repl. 2012).

The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(a)(Repl. 2012). For prevailing on appeal, the claimant's attorney is entitled to an additional fee of five hundred dollars (\$500), pursuant to Ark. Code Ann. §11-9-715(b)(Repl. 2012).

IT IS SO ORDERED.

SCOTTY DALE DOUTHIT, Chairman

M. SCOTT WILLHITE, Commissioner

Commissioner Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's determination that the claimant has proved she sustained a compensable bilateral carpal tunnel syndrome injury.

To establish a compensable gradual-onset injury, a claimant must prove by a preponderance of the evidence that (1) the injury arose out of and in the course of his employment; (2) the injury caused internal or external physical harm to the body that required medical services or resulted in disability or death; (3) the injury was caused by rapid repetitive motion; (4) the injury was a major cause of the disability or need for treatment. *Lay v. United Parcel Service*, 58 Ark. App. 35, 944 S.W.2d 867 (1997); Ark. Code Ann. § 11-9-102(4) (Repl. 2002). “Carpal tunnel syndrome is specifically categorized as a compensable injury” falling within the definition of rapid repetitive motion. Ark. Code Ann. § 11-9-102(4)(A)(ii)(a).

The claimant has not proved by a preponderance of the evidence that her carpal tunnel injury arose out of the course and scope of her employment with Rockline Industries. Most importantly, after multiple examinations of the claimant’s wrist and lab work indicating elevated ESR and anti-ANA titer suggestive of lupus, Dr. Konstantin Berestnev attributed the claimant’s ongoing wrist pain to “Lupus – not work-related” and referred claimant to her primary care physician on May 18, 2022, releasing the claimant from his care. (See Resp. Ex. 1).

It is impossible for the Commission to attribute the claimant’s carpal tunnel syndrome to a single employer when the claimant was working for

multiple employers, and owned her own business, at the time of her injury. The claimant worked for the respondent employer from 2019 through April of 2022 with no complaints of wrist pain. (See Hrng. Tr, Pp. 6-8, 25).

During this time, the claimant worked various other jobs with duties that involved wrist-intensive activities such as typing or machine work. (Hrng. Tr., Pp 12-15). These included working at Lindsey Management, C&W Properties, and Staffmark where she regularly operated a computer and later at Tyson as a machine operator and at Walmart Optical monitoring machinery. *Id.* The claimant testified that her work with Walmart involved “monitoring the screens,” but “when the machine jams up. Yes. I would go in and take out the jam.” (Hrng. Tr., P. 13). In December 2021, the claimant became employed as a manager at Famous Footwear where she was responsible for opening boxes and rotating and examining shoes when purchased; operating the cash register; operating a computer; and counting money. (Hrng. Tr., Pp. 13-14, 35). She was employed with both Famous Footwear and Rockline Industries when her complaints of wrist pain began. (Hrng. Tr., P. 15). Finally, at the beginning of 2022, the claimant became self-employed at MB Creations, where the claimant would personalize items for customers such as t-shirts and cups. (Hrng. Tr., P. 16, 35). There is no indication in the record that any of the claimant’s treating physicians were ever notified of the claimant’s concurrent employment.

The record is clear that the claimant has failed to prove by a preponderance of the evidence that her condition arose out of the course and scope of her employment with Rockline Industries. Throughout her employment with Rockline, the claimant worked multiple jobs concurrently, with each requiring extensive use of her hands and wrists. At the time her complaints of wrist pain began, the claimant had been working for a new employer, Famous Footwear, for nearly six months using her hands and wrists twenty hours per week. In the months before her injury arose, claimant began her own business holding, rotating, and manipulating objects. There is no way to attribute the claimant's injury to one single cause or to any one employer and for this reason the claimant has failed to meet her burden of proving by the preponderance of the evidence that her work with the respondent employer led to her injury.

For the reasons stated above, I respectfully dissent.

MICHAEL R. MAYTON, Commissioner