

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H300539

FELICIA BELL, EMPLOYEE

CLAIMANT

VS.

WALMART ASSOCIATES, INC., EMPLOYER

RESPONDENT

**WALMART ASSOCIATES, INC./
WALMART CLAIMS SERVICES, CARRIER/TPA**

RESPONDENT

OPINION FILED NOVEMBER 21, 2024

Hearing before Administrative Law Judge, James D. Kennedy, on the 8TH day of October 2024, in Little Rock, Arkansas.

Claimant is Pro Se.

Respondents are represented by Michael C. Stiles, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted on the 8th day of October 2024, in Little Rock, Arkansas, to determine the compensability of an alleged repetitive motion injury of both hands of the claimant that she contended cumulated on or about October 16, 2023, and if the claim is found to be compensable, the issue of reasonable and necessary medical benefits. A copy of the Pre-hearing Order as well as the response to the Prehearing Questionnaire by both the Claimant and the Respondent were made part of the record without objection.

From a review of the record as a whole, to include medical reports and other matters properly before the Commission and having had an opportunity to observe the testimony and demeanor of the witnesses, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. 11-9-704.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. That the Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. That the claimant has failed to satisfy the required burden of proof to show the existence of a compensable repetitive motion injury to both of her hands that cumulated on or about October 19, 2023.
3. That this matter involving the same rapid repetitive injuries was previously settled in a Joint Petition on December 20, 2022. (H207221).
4. That all other issues are moot.
5. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

REVIEW OF TESTIMONY AND EVIDENCE

The claimant, Felicia Bell, testified she “sustained this carpal tunnel.” “After I had surgery, the doctor told me I had carpal tunnel. Well, I had injuries before that, but the numbness, the tingling, the burning sensation, I never knew what it was until I had surgery.” The claimant went on to state she told Walmart, “but, prior to that, I had another injury, and then I called workman’s comp. They said it was two different cases, so here we are today.” “I had carpal tunnel, and I had to have surgery on both of my wrists, and I have - - I’m not able to have the surgery because I’ll be off work, and I can’t pay my bills.” She stated she had not had surgery yet and that it was painful. She worked 12 – hour shifts as a “cutter” and “putter” and cut 5000 to 6000 boxes a day and as a putter she makes over 6000 in production. “A putter is you scan a box. You have a section, and it’s six boxes up here, six boxes down here. And when I scan the boxes, they put one, two in

each box, and I'll just - - you have to move real fast with your hands." She stated she constantly used her hands. (Tr. 8, 9)

Under cross examination, the claimant was questioned about a nerve study which provided "bilateral hand and wrist numbness, tingling and burning began 2021". She admitted the nerve study was read correctly but stated "I had no idea what I had. I just went to the doctor and, you know, I had the other incident. And then when this came about, I went to the doctor. He said I have carpal tunnel from the surgery, and he said it probably began in 21 but I just didn't know about it." The claimant admitted having surgery on her left wrist on September 19, 2022, with Dr. Thomas Day in regard to a knot that "grew up in my wrist." (Tr. 10, 11)

The following questioning then occurred:

Q: And it was one or two days after that surgery that you then reported to Walmart, that you filed your prior claim, is that correct?

A: They would not let me file a prior claim, because they said I had the open claim with the wrist for the surgery and I tried to tell them the doctor said I have carpal tunnel as well, but they wouldn't let me file it. That's why I called the workman's comp.

Q. Okay. And it was, what, about three, four days after that surgery that you saw Doctor - - or I'm sorry - - Nurse Teresa Rhew, and that's R-H-E-W. Am I pronouncing that - -

A. I've seen her prior, but I was - - She sent me to the specialist, and I've been - - She's my main doctor.

Q. Okay.

A. So, I see her frequent. (Tr. 12)

The claimant admitted she was sent to the clinic for pain and numbness in regard to both hands, a couple of days after her September 19, 2022, surgery. She admitted having the carpal tunnel or wrist ailments in 2021 and in September of 2022, long before

October 19, 2022, but contended she did not know what it was until she saw Ms. Teresa.

The following questioning then occurred:

Q. And so, at the time that you were initiating your prior claim against Walmart, you were experiencing these numbness, tingling pains in your wrist, correct?

A. Uh-huh. Didn't know what it was at that time, yeah, until after I had my surgery in 22.

Q: But is it a 'yes' or a 'no,' at the time you initiated your first claim against Walmart - -

A. Uh-huh

Q. - - were you experiencing pain and numbness in both wrists and hands?

A. Not as much as after I had the surgery. After I had the surgery and it intensified (sic) it, I guess. (Tr. 13, 14)

Q. And then it was October 14, 2022, that you requested a hearing, a workers' comp hearing regarding your pains and ailments for your first injury - - your first claim against Walmart, correct?

A. Oh. You talking about the - - the surgery?

Q. When you initiated the claim - -

A. Yeah. My first surgery was in twenty - - hold on.

Q. It was in September - - on September 19, 2022. (Tr. 13 – 15)

The claimant admitted she filed her first claim and then five days later, she filed again on October 19, and contended she sustained bilateral carpal tunnel syndrome to both of her wrists. She also contended she was told it was two separate cases by the workers' comp legal aid. (Tr. 16, 17) The claimant also admitted she already had all the problems with her hands and wrists when she initiated the first claim and contended they would not let her file a piece of paper which stated that she had carpal tunnel. The first claim was Claim number H207221, where the claim was denied but settled with a joint petition. The claimant admitted settling the first claim after discovery, but again stated it was not carpal tunnel. (Tr. 18, 19) She also admitted she sent an email on December 9,

2022, which provided she was thinking about having surgery for both hands due to carpal tunnel. (Tr. 20) At the time of the email, she had not initiated a second claim because “I was thinking that I can tell you about it so we can wrap it all in one, but they said it was two separate - - two separate claims.” She admitted she was telling the respondent’s attorney she had carpal tunnel. (Tr. 21) The claimant ultimately agreed to settle her initial claim, and a Joint Petition was entered into on December 20, 2022. She also admitted the first paragraph of the settlement discussed gradual onset injuries to her upper extremities, wrists, and hands, which culminated on or about July 24, 2022, and the Joint Petition contained her signature. She signed the Joint Petition Questionnaire and had in fact read the joint petition or had it read to her. (Tr. 22, 23) She was then questioned about how she stated in the Joint Petition hearing that her job with the respondent was rapid and repetitive, and she responded that her hands were okay and at the moment of the question, she didn’t feel any pain, tingling, or burning sensations. (Tr. 26) She also admitted that at the time of the Joint Petition, she stated she did not anticipate any medical treatment for her hands, wrists, and upper extremities. “Because I was fine at the time, but it’s getting worse.” The claimant again reiterated these were two different cases and when asked about there being no incident or accident on October 19, 2022, she responded, “Well it happened at work. That’s how I got carpal tunnel.” When asked “that’s what was settled in that first claim” she responded “It was settled because I had a strain in my wrist that grew a knot. That was for the first surgery, and that’s when they found out I had carpal tunnel.” I was told I couldn’t file but legal aid said that it was two different cases. She admitted she went through a settlement hearing where the pains and ailments in both hands and the upper extremity were discussed. (Tr. 27, 28)

The next witness was Nicloe Woodruff who was called by the claimant. Ms. Woodruff testified that she worked for Walmart Distribution as a Put Order Filler where she filled orders, scanned boxes, and threw merchandise into boxes. Her production was 5800 per day but she always went over in a 12-hour shift. She stated that the claimant was a cutter/putter. (Tr. 32)

Claimant was allowed to proffer an exhibit that was found to not be admissible due to the fact it was not timely provided to the opposing side and outside the seven-day time limit. (Cl. Proffer 1)

The respondents' submitted exhibits without objection, with the first exhibit being a medical report from Teresa Rhew, APRN, dated September 23, 2022. The report provided that the chief complaint was bilateral tingling and numbness with possible carpal tunnel (emphasis added) (Resp. 1, P. 1 – 6) An email from the claimant dated December 9, 2022, provided she went to the specialist that week to have surgery on both wrists for carpal tunnel. (Resp. 1, P. 7)

A Joint Petition Order dated December 20, 2022, was entered into the record and it provided that the claimant was to receive a lump sum payment of \$7000.00. (Resp. Ex. 1, P. 8, 9) The Joint Petition provided it was a compromise settlement on a disputed claim and that the Joint Petition would be final as to the rights of all the parties. It additionally provided that the claimant sustained gradual onset injuries to her upper extremities, her wrists, and her hands which culminated on or about July 24, 2022, which arose out of and in the course of her employment with Wal-Mart Associates, Inc. The document further provided that the respondent employer denied and continued to deny that the Claimant sustained a compensable injury within the meaning of the Arkansas Workers'

Compensation Act. This document was signed and approved by the claimant. (Resp. 1, P 10 – 13) The Joint Petition Questionnaire that was made part of the record provided that the claimant had in fact read the Joint Petition and her applicable rights were explained in regard to the settlement, and she also approved and signed this document. (Resp. 1, P. 14 – 18)

DISCUSSION AND ADJUDICATION OF ISSUES

In determining whether the claimant has sustained her required burden of proof, the Commission shall weigh the evidence impartially, without giving the benefit of the doubt to either party. Ark. Code Ann 11-9-704. Wade v. Mr. Cavanaugh's, 298 Ark. 364, 768 S.W. 2d 521 (1989). Further, the Commission has the duty to translate evidence on all issues before it into findings of fact. Weldon v. Pierce Brothers Construction Co., 54 Ark. App. 344, 925 S.W.2d 179 (1996).

The claimant bears the burden of proof in establishing entitlement to benefits under the Arkansas Workers' Compensation Act and must sustain that burden by a preponderance of the evidence. Dalton v. Allen Engineering Co., 66 Ark. App. 201, 635 S.W. 2d 823 (1982). 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. 263, 101 S.W.3d 252 (2003). Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. Powers v. City of Fayetteville, 97 Ark. App. 251, 248 S.W.3d 516 (2007). Where there are contradictions in the evidence, it is within the Commissions' province to reconcile conflicting evidence and to determine the true facts. Cedar Chem. Co. v. Knight, 99 Ark. App. 162, 258 S.W.3d 394 (2007). However, the Commission may not arbitrarily

disregard the testimony of any witness. Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230, 184 S.W.3d 31 (2004).

A.C.A. 11-9-102 (4) provides in pertinent part that a “Compensable injury” means: (ii) An injury causing internal or external physical harm to the body arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by a time and place or occurrence.

If the injury is caused by rapid repetitive motion, and carpal tunnel syndrome is specifically categorized as a compensable injury falling within this definition, the standard for interpreting “rapid repetitive motion” is two pronged: (1) the tasks must be repetitive, and (2) the repetitive motion must be rapid. See Malone v. Texarkana Schools, 333 Ark. 343, 969 S.W.2d 644 (1998). Even repetitive tasks must be completed rapidly. The issue of whether an injury meets the rapid repetitive motion requirements will ordinarily be a question of fact. Westside High School v. Patterson, 79 Ark. App. 281, 86 S.W.3d 412 (2002). The proof provided by the claimant failed to satisfy these requirements. The statements by the claimant along with her witness, provided that the claimant performed multiple daily tasks but did not satisfy the evidentiary requirements in regard to the degree of repetitiveness and how rapidly these actions were performed. Additionally, a compensable injury must be established by medical evidence supported by objective findings. A.C.A. 11-9-102 (4) (D). “Objective findings” are those which cannot come under the voluntary control of the patient. (A.C.A. 11-9-102 (16) (A) (i). Here, there are no objective findings supporting the claimant’s contentions, even if the proffered testimony had been admitted as evidence.

Additionally, it is clear the claimant entered into a compromise settlement involving a Joint Petition which was approved on December 22, 2022. The Joint Petition provided that the Claimant took the position she suffered from gradual onset injuries to her upper extremities, her wrists, and her hands which culminated on or about July 24, 2022. In the current matter and hearing, the claimant appears to have taken the position that although she suffered from pain and injuries at the time of the Joint Petition settlement (specifically suffering from “bilateral hand and wrist numbness, tingling and burning” which began in 2021 as per testimony at the time of this hearing), the injuries were not called carpal tunnel at the time of the Joint Petition and consequently, she is entitled to pursue another claim on the same injuries using the term carpal tunnel for this injury. However, the law is quite clear that the issue of a rapid repetitive motion or carpal tunnel injury, or for that matter any other injury, cannot be relitigated after a Joint Petition settlement has been entered into and approved by the Commission.

Based upon the above evidence and the applicable law, and after weighing the evidence impartially, without giving the benefit of the doubt to either party, there is no alternative but to find that the claimant has failed to satisfy the required burden of proof to prove by a preponderance of the evidence that she suffered a rapid repetitive motion injury (Carpal tunnel) and that additionally, the matter was previously settled in a Joint Petition on December 20th, 2022. (H207221) Consequently, all other issues are moot. If not already paid, the respondents are ordered to pay the cost of the transcript forthwith.

IT IS SO ORDERED.

JAMES D. KENNEDY
Administrative Law Judge