# Commonwealth of Kentucky
# Workers' Compensation Board

**OPINION ENTERED: June 24, 2016**

CLAIM NO. 201495515

CAROL ARNETT PETITIONER

VS. **APPEAL FROM HON. OTTO DANIEL WOLFF, IV, ADMINISTRATIVE LAW JUDGE**

FORD MOTOR COMPANY
and HON. OTTO DANIEL WOLFF, IV,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

**OPINION**
**AFFIRMING**
* * * * * *

BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

**STIVERS, Member.** Carol Arnett ("Arnett") appeals from the December 22, 2015, Opinion, Order, and Award and the February 19, 2016, Order on Petition for Reconsideration of Hon. Otto Daniel Wolff, IV, Administrative Law Judge ("ALJ"). In the December 22, 2015, Opinion, Order, and Award, the ALJ determined Arnett sustained a work-related left shoulder injury and awarded temporary total disability

("TTD") benefits, permanent partial disability ("PPD") benefits, and medical benefits. The ALJ dismissed Arnett's claim for alleged work-related injuries to her left elbow, forearm, and wrist. On appeal, Arnett asserts the ALJ committed reversible error by failing to award benefits for said injuries.

The Form 101 alleges that on August 28, 2013, Arnett injured her left shoulder while working for Ford Motor Company ("Ford") in the following manner: "Repetitive job duties."

On December 15, 2014, Arnett filed a "Motion to Amend Form 101" requesting leave to amend her Form 101 to include injuries to her left elbow, left wrist, and left forearm. By order dated January 5, 2015, the motion was sustained.

The October 6, 2015, Benefit Review Conference ("BRC") order lists the following contested issues: benefits per KRS 342.730; work-relatedness/causation [handwritten: "as to left elbow, wrist, forearm"]; unpaid or contested medical expenses [handwritten: "related to elbow, wrist]; injury as defined by the ACT [handwritten: "elbow wrist"]; and TTD. Under "other" is the following: "Plaintiff earning same or greater AWW."

Arnett introduced the November 4, 2014, Independent Medical Evaluation ("IME") of Dr. Warren Bilkey. After performing an examination, Dr. Bilkey set forth the following impression:

> 1. 8/28/13 work injury, left shoulder strain.
>
> 2. Labrum tear aggravation, impingement, biceps tendinitis. Ms. Arnett underwent surgical treatment of these. She had post-operative adhesive capsulitis and has undergone manipulation under anesthesia.
>
> 3. There is residual left shoulder limitation of motion, rotator cuff weakness. There is scapular myofascial pain.
>
> 4. Lateral epicondylitis, cubital tunnel syndrome.

Dr. Bilkey further opined as follows:

> Ms. Arnett irritated/strained her shoulder doing repetitive lifting and reaching work in the course of her usual job setting. This became a significant problem after [sic] change in job duties had occurred. There were further attempts to change job duties however, these aggravated her condition and she required medical care. Diagnostic imaging proved positive and she underwent surgery with a second surgery manipulation under anesthesia. Although improved, there is residual contracture affecting the left shoulder. She has myofascial pain affecting the scapular muscles. There is rotator cuff weakness yet. She has forearm symptoms more distal in the

> upper limb. She has been diagnosed with lateral epicondylitis and cubital tunnel syndrome and has been treated conservatively for this. The myofascial pain component of her problems appears to have extended into the forearm. Ms. Arnett has continued to work having only a two-month interruption in her job duties. She however has shifted to a lighter level of work that she currently tolerates.
>
> In my opinion, the above diagnoses are due to the 8/28/13 work injury. The evaluation and treatment procedures that have been carried out appear to have been reasonable, medically necessary and work injury related. There is no evidence here that Ms. Arnett had an active impairment affecting these injury sites prior to 8/28/13.

Regarding an impairment rating, Dr. Bilkey opined as follows:

> A permanent partial impairment may be calculated based upon today's assessment. According to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, for loss of shoulder active range of motion, according to Fig. 16-40, for loss of flexion there is 3% upper limb impairment. (1% impairment is subtracted because there is a mild loss of motion on the uninvolved right side). For loss of extension there is 1% impairment. According to Fig. 16-43, for loss of abduction there is 2% impairment. According to Fig. 16-46 for loss of external rotation there is 1% impairment and for loss of internal rotation there is 2% impairment. These total 8% upper limb impairment for loss

> of left shoulder active range of motion. For residual rotator cuff weakness according to Table 16-35 there is 2% upper limb impairment for internal and external rotation each. These combine to yield 12% upper extremity impairment and this converts to 7% whole person impairment. For the residual chronic pain related to lateral epicondylitis, cubital tunnel syndrome, and the myofascial pain extending into the upper limb, there is 2% whole person impairment according to Fig. 18-1 in the Chapter on Chronic Pain. No impairment is issued for neurological loss related to cubital tunnel syndrome as none is demonstrated on physical examination today. Combining these impairments yields a total 9% whole person impairment solely attributable to the 8/28/13 work injury.

Ford introduced the February 5, 2015, report of Dr. Ronald Fadel. After performing an examination, Dr. Fadel set forth the following diagnoses:

> Strain/sprain related rotator cuff and biceps tendonitis left shoulder
>
> Impingement syndrome left shoulder
>
> Status post lateral epicondylitis
>
> Possible cubital tunnel syndrome, inconclusively established
>
> Possible bilateral CTS, inconclusively established
>
> Mild exogenous obesity (bmi - 29)
>
> SLAP lesion left shoulder

Possible developing adhesive capsulitis

Regarding causation, Dr. Fadel opined as follows:

> In my opinion the strain/sprain diagnosis and the impingement syndrome of the left shoulder is work related and secondary to the chronic necessity of working with both arms elevated in a deconditioned patient. **The lateral epicondylitis is not present at this time but may have been work related.** The labral tear pre-dates the work claim in this case and thus is not related to this claim. While she may have had an exacerbation of this pre-existing pathology, I am disinclined to call this an aggravation. **It is my belief Ms. Arnett's only work related conditions was the impingement and strain/sprain of soft tissue structures. The possible CTS and Cubital Tunnel Syndrome are not work related.** Please see history as provided by the patient. These are more likely gender and body weight related versus occult hypothyroidism or diabetes.

(emphasis added).

The May 18, 2015, addendum report of Dr. Fadel was introduced in which he opined as follows:

> As requested I reviewed the additional medical records of Carol Arnett. These documents are comprised primarily of the serial medical visit notes at the Medical Department of the Ford Motor Company where she is employed.
>
> As would marginally impact the subject injury, this rather extensive record set reveals Ms. Arnett had work related left shoulder problems as far back as

> 2006 when she reported an injury on the assembly while dealing with a door installation. She underwent an MRI which confirmed acromioclavicular degenerative joint disease with secondary focal impact upon the supraspinatus tendon but without cuff tear. This finding is compatible with impingement syndrome.
>
> The records additionally revealed Ms. Arnett had right shoulder pain complaints on the job and again on the left in 2012 at which time PT was prescribed.
>
> There are also visit notes from 2015 which reflect the claimant received additional treatment for ongoing left shoulder complaints as well as notations regarding efforts to place Ms. Arnett in a more suitable job for her shoulder.
>
> After review I am unable to identify any other substantive information not otherwise addressed in the original report and or which would alter or impact the conclusions previously offered in this case.

The September 12, 2014, medical record of Kleinert Kutz & Associates Hand Care Center pertaining to an examination performed by Dr. Michael Nicoson was introduced. After performing an examination, Dr. Nicoson diagnosed left cubital tunnel syndrome, McGowan Grade 1 and left lateral epicondylitis. He opined as follows:

> It is a pleasure meeting with Ms. Arnett in the clinic today. We had a long discussion regarding herhistory

[sic] and physical examination. She's been having continued pain in her left shoulder predominantly since the time of her social [sic] shoulder surgery this past February 2 months ago she noted swelling in the region of her left arm antecubital fossa. She is [sic] been seen in the emergency department for thisto [sic] rule out a DVT, especially given her past medical history of having a DVT and a pulmonary embolism. She continues to work on light duty on her job. She presents today for management options. After my examination of her I feel that they're 2 diagnoses which fit herclinical [sic] scenario. One of these is cubital tunnel syndrome, the other being lateral epicondylitis. In regards to her cubital tunnel syndrome I have given her a [sic] elbow pad to be worn at night. This will prevent excessive flexion of her left elbow and decompress the ulnar nerve. In regards to her lateral epicondylitis and [sic] we'll provide for her an air cast. Given that she is only minimally tender to palpation on this area and [sic] I have not offered her a corticosteroid injection at this time. I would also like for her to be seen again by Dr. Smith for her significant shoulder pain and [sic] she's had since the time of surgery. In regards [sic] to the nonspecific swelling of her left forearm [sic]. I am not concerned that this is related to any type of DVT. She has no palpable cords noted nor does she have any type of pain on palpation. The arm itself was not even significantly swollen on my examination today. She may have nonspecific swelling of her proximal forearm consistent with a lymphedematous-type picture. I think that the splinting modalities that we have provided with her will help with this. I will see her

> back on a when necessary type fashion pending her evaluation by Dr. Smith. Her questions were answered to her satisfaction.

Arnett's first deposition took place on December 15, 2014. She testified the first surgery on her left shoulder following the injury occurred in February 2014 and was performed by Dr. James Smith. Arnett testified that the surgery "helped a little bit." However, she then suffered from "frozen shoulder" which required a manipulation procedure. At the time of her deposition, Arnett's shoulder was still painful.

Arnett testified concerning the pain she was experiencing in her left forearm:

> Q: Then you indicated that your forearm is swelling and hardened?
>
> A: Yes.
>
> Q: When did that start?
>
> A: That started in about July.
>
> Q: Of?
>
> A: This year.
>
> Q: After you went back to work?
>
> A: Well, what happened was, one day after physical therapy, I felt like a big knot right here (indicating). Well, it was the day after physical therapy, because the physical therapy is Monday and Wednesday.

I know I went Monday and Wednesday for sure and then the next morning, I'm like, oh, my. You know, I said, I've got this big lump here. So I went into medical, and I showed the nurse (indicating).

Q: Let me just say that you're indicating you felt a big lump at the base of the left side of your neck?

A: Well, by my shoulder. It wasn't in my neck. It was right by my shoulder.

Q: Along the top of the shoulder?

A: Right. So I went into medical.

Q: Kind of behind the clavicle?

A: Yes. Right. And it really scared me. So I went up to medical, and I showed the head nurse, Kim, and she- I don't remember if she said it looked like a spasm or not, but I showed it to- as soon as I went to physical therapy, I showed the physical therapist.

Then he put heat on it, or I don't know if he put heat or cold or ice, but anyway, I feel like it was- you know, I don't know if it was too much physical therapy or whatever, but anyway, I felt like it's all from my shoulder.

And then after that one popped up, then this popped up, so I thought that it was all connected.

Q: The hardening in the left forearm?

A: Yeah. It was bigger than this. When it first happened, I had pictures on my phone, and then because I'm so computer illiterate, when I tried to back up my phone, I lost them all. My arm was huge. I showed my mother-in-law, and I

said, look at my arm. It was really big.

...

Q: So the arm where it's hard in the left forearm, that is painful?

A: Yes.

...

Q: Were you still treating with Doctor Smith when you had the knot at the clavicle and the forearm hardening?

A: I was still seeing him, yes.

Q: Did you mention those symptoms to him?

A: Yes, I told him about my arm and my shoulder. And he didn't think that it had anything to do with the surgery, so he sent me to a hand specialist, Kutz & Kleinert.

So I saw them, and a hand specialist said, you know, from everything I told him, that he thought it was from my shoulder. But he found that I had epicondylitis in my elbow, so that's all we got out of that.

Q: You don't remember what job you were performing when you started having symptoms around your elbow?

A: I mean, my elbow ached a little bit every now and then. You mean from what the hand specialist found?

Q: Right. When you developed the problems with the forearm and elbow, what job were you performing?

> A: Let's see. Let me think back for a second. Because we were going on vacation. I didn't get to go anywhere. I really don't know. I can't remember where they sent me.
>
> They might know, because like I said, they had sent me to body sides, you know. I was there for eight to ten days. Then they put me somewhere else.
>
> It seemed like every time this certain superintendent would come back, she would send me somewhere else that I couldn't do.
>
> Q: Did those problems happen on some job that you were working out there?
>
> A: I just happened to notice it one day, and I looked down, and my arm was huge. As a matter of fact, I went to the emergency room.

Arnett was also deposed on May 22, 2015. Regarding when she first started experiencing problems in her left elbow, wrist, and forearm she testified:

> A: Well, mostly it- actually, Doctor Smith had sent me to the hand specialist, and they- he is the one that actually found what was in my- it was my arm that was hurting, my forearm that was hurting and swelling up.
>
> Me and my mother-in-law were out one day, and I looked down, and my arm was huge. And I said, oh, my God. You know, my mother-in-law is Edie. I said, oh, my God, Edie. Look at my arm. It's huge.
>
> I mean, it scared me to death. So I actually went to the emergency room.

You know, I was afraid it might be a blood clot or something.

And so I went back to see Doctor Smith, and he's the one that sent me to the hand specialist, and the hand specialist is the one who saw the epicondylitis in my elbow.

Q: Just to give me a time frame on this, this, of course, all occurred after your surgery with Doctor Smith, correct?

A: Yes.

Q: Did you start having symptoms in the forearm and elbow, and did you just like you said earlier, you were out and noticed all of a sudden it was really swollen?

A: Yeah, my arm was hurting. My forearm was hurting, and then that's when I looked down. I was rubbing it, because it was hurting, and then when I looked down while I was rubbing it, I seen it was all swelled up.

Q: As far as when it started hurting, was it on that same day that you looked down and noticed that it was really swollen?

A: Yes.

Q: Prior to that time, had you ever had any problem with your left elbow or wrist or hand?

A: No.

Q: Prior to that time, had you ever sought any medical treatment for your left elbow, wrist, or hand?

A: No.

Arnett was asked about her current symptoms in her upper left extremity:

> A: Okay. Well, my shoulder bothers me, I guess- when I'm doing the patch job, I mostly use my right arm, so I guess I'm overcompensating with my right arm, so I don't use my left arm as much, because my left shoulder, it just constantly hurts, you know.
>
> I can't really lay on it for a long period of time. I have to move around a lot, because it just hurts the majority of the time, and actually down into my bicep and then the swelling in my forearm.
>
> And sometimes my elbow will ache, but it doesn't ache all of the time, just every now and then.
>
> Q: When you have the swelling in your forearm, is there any pain or anything associated with that?
>
> A: Sometimes, not all of the time. I guess it depends on how big it gets. If it's just swollen a little bit, it just seems a little tight.
>
> Q: Are you having any symptoms in the wrist or hand at this point?
>
> A: Not too bad.

Arnett also testified at the October 21, 2015, hearing. Regarding her left elbow, wrist, and forearm, she testified as follows:

> A: Like I said, it's aching and it feels like a needle- like a needle type burn- burning, you know.

> Q: Now, based upon your one visit to Kleinert and Kutz, did- do you have an understanding of what the problem is in your arm as compared to your shoulder?
>
> A: Not- not really.
>
> ...
>
> Q: Well, let me ask you this, is it your understanding, based on Kleinhart [sic] and Kutz, that there's something in your arm to treat as compared to just being in your shoulder?
>
> A: He said- yeah. I have epicondylitis, which-

In the December 22, 2015, Opinion, Order, and Award, the ALJ entered the following findings of fact regarding the work-relatedness of Arnett's alleged left elbow, forearm, and wrist injuries:

> There are two essential elements to every workers' compensation claim: (1) an injury and (2) causation. "Causation" consists of two components, medical and legal.
>
> Medical causation is a question to be addressed by healthcare providers within the realm of "reasonable medical probability." Legal causation, commonly referred to as "work-relatedness," is a factual determination to be made by the ALJ.
>
> Medical evidence, although relevant and material, must be considered not as determinative but rather as a part of the "totality of circumstances" upon which the ALJ must make the factual determination of

whether the alleged disability was caused by the work the alleged employee performed for an employer. *Hudson v. Owens, 439 S.W.2d 565 (Ky., 1969).*

In determining whether an injury is work-related, no single factor should be given conclusive weight, and the decision must be based on the quantum of aggregate facts rather than the existence or non-existence of any particular factor. *Hayes v. Gibson Hart Co., 789 S.W.2d 775 (Ky., 1990).*

"Work-related" and "arising out of and in the course of employment" are synonymous terms. *Armco Steel Co. v. Lyons, 561 S.W.2d 676 (Ky., 1978).*

The role of weighing evidence, drawing inferences, and making determinations rests solely in the hands of the ALJ. *Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000).*

Plaintiff testified during her May 27, 2015 deposition her forearm starting hurting her while she and her mother-in law were out shopping. While shopping her arm hurt, and she looked down, and saw it was swollen. She was unsure of the exact date that incident occurred, but she was sure it was after Dr. Smith's shoulder surgery. She never before experienced problems with her left elbow, forearm or wrist.

Dr. Bilkey concludes Plaintiff's left arm symptoms are related to her August 28, 2013 work injury. In making that link he seems to suggest Dr. Nicholson's [sic] input supports that conclusion. For instance, he writes Dr. Nicholson [sic] reviewed x-rays, Dr. Nicholson [sic] did review x-rays, he did, but the x-rays were three views of Plaintiff's left thumb, which revealed,

“early onset CMC degenerative arthritis.” Dr. Bilkey also wrote in his IME report, referring to Dr. Nicholson’s [sic] evaluation, “Work injury history is documented,” but after reviewing Dr. Nicholson’s [sic] office-visit notes, it remains unclear exactly where “work injury history” is documented.

Dr. Bilkey also wrote, “Dr. Nicholson [sic] noted the swelling that had been a presenting complaint,” but a review of Dr. Nicholson’s [sic] record reads, “In regards to the nonspecific swelling of her left forearm. I am not concerned that this is related to any type of DVT... the arm itself was not even significantly swollen on my examination today. She may have nonspecific swelling of her proximal forearm consistent with a lymphedematous-type picture.”

In his February 5, 2015 IME report Dr. Fidel [sic] noted, “Ms. Arnett reports that has had numbness and tingling events in both hands at night left greater than right ever since she started (1994) working for the Ford Motor Company. She states she is able to shake her hands during the night for relief. She does state that since the accident she is more aware of these episodes.”

Dr. Fidel [sic] once asked whether Plaintiff’s epicondylitis and/or tribunal [sic] tunnel syndrome and a myofascial pain extending into the upper limb were closely related to Plaintiff’s August 20, 2013 [sic] the left shoulder injury, he responded, “the lateral epicondylitis is not present at this time but may have been work related… the possible CTS and cubital tunnel syndrome or [sic] not

> work related. Please see history as provided by the patient. These are more likely gender and body weight related versus occult hyperthyroidism or diabetes."
>
> Based upon the above it is determined Plaintiff has not presented ample persuasive proof linking her left elbow, forearm and wrist symptoms to the work she did for Defendant. Dr. Nicholson's [sic] September 12, 2014 office-visit record does not address the cause of Plaintiff's left arm problems, in fact the content of his record could be interpreted as indicating Plaintiff's symptoms were not work-related, because he notes, "She may have nonspecific swelling of her proximal forearm consistent with lymphedematous-type picture." Dr. Bilkey's opinions as to causation are not based upon a solid foundation for his conclusion Plaintiff's left arm problems are related to the work she did for the Defendant.
>
> Based upon the above, Plaintiff's claim for work-related left elbow, forearm and wrist injuries' are dismissed.

Both Arnett and Ford filed Petitions for Reconsideration. Arnett's petition was overruled by order dated February 19, 2016.

On appeal, Arnett asserts there are no medical records in the record that document any other causative diagnosis for her alleged left elbow, left forearm, and

left wrist injuries other than her work activities. We affirm.

As the claimant in a workers' compensation proceeding, Arnett had the burden of proving each of the essential elements of her cause of action which includes causation. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Arnett was unsuccessful in proving causation regarding her alleged left elbow, left wrist, and left forearm injuries, the question on appeal is whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling evidence" is defined as evidence that is so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). The function of the Board in reviewing the ALJ's decision is limited to a determination of whether the findings made by the ALJ are so unreasonable under the evidence that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

The ALJ relied upon Dr. Fadel's February 5, 2015, report in which he opined that while the strain/sprain and impingement syndrome of Arnett's left shoulder is work-related, the lateral epicondylitis "may have been work

related" and the "possible CTS and Cubital Tunnel Syndrome are not work related." The ALJ also relied upon the September 12, 2014, medical record of Kleinert Kutz & Associates Hand Care Center. Regarding Arnett's left forearm, Dr. Nicoson opined as follows: "She may have nonspecific swelling of her proximal forearm consistent with a lymphedematous-type picture." Finally, the ALJ relied upon Arnett's testimony regarding when she first noticed a problem with her left forearm. The sum total of this evidence comprises substantial evidence in support of the ALJ's determination Arnett failed to prove causation regarding her alleged left elbow, left wrist, and left forearm injuries.

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the discretion to determine all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party’s total proof. Magic Coal Co. v. Fox,

19 S.W.3d 88 (Ky. 2000). Although a party may note evidence that would have supported a different outcome than that reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences that otherwise could have been drawn from the record. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999). So long as the ALJ's ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986).

The record does not compel a different result; thus, the dismissal of Arnett's claim for alleged injuries to her left elbow, left wrist, and left forearm will not be disturbed.

Accordingly, the December 22, 2015, Opinion, Order, and Award and the February 19, 2016, Order on Petition for Reconsideration are **AFFIRMED**.

ALL CONCUR.

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