

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

**LORRIE LOTT**

Claimant

v.

**KANSAS STAR CASINO, LLC.**

Respondent

AP-00-0462-400

CS-00-0460-777

and

**ACE AMERICAN INSURANCE COMPANY**

Insurance Carrier

**ORDER**

Respondent and Insurance Carrier request review of the November 23, 2021, preliminary Order issued by Administrative Law Judge (ALJ) Ali Marchant.

**APPEARANCES**

Jordan Shaw appeared for Claimant. Timothy A. Emerson appeared for Respondent and Insurance Carrier.

**RECORD AND STIPULATIONS**

The Appeals Board adopted the same stipulations and considered the same record as the ALJ, consisting of the Preliminary Hearing transcript, held November 9, 2021, with Exhibits A1-6, and the pleadings and orders contained in the administrative file. The Appeals Board also reviewed the parties' briefs.

**ISSUE**

Did Claimant meet her burden of proving she sustained personal injury by repetitive trauma arising out of and in the course of her employment with Respondent?

**FINDINGS OF FACT**

Claimant works for Respondent as a card and table games dealer. Claimant worked for Respondent for five years, and works eight-hour shifts. Claimant's work includes pulling cards from a "shoe", dealing cards, collecting and paying money, and putting cards back.

Claimant shuffles cards by hand half the time she shuffles. It is undisputed Claimant's work requires constant, repetitive use of both hands.

Claimant noticed her left thumb and hand became painful while she was working. Claimant denied suffering an acute injury producing her symptoms. Claimant could not recall a specific date her symptoms began, but noticed her symptoms were getting progressively worse while working. On August 1, 2021, Claimant was cleaning chips at work and felt a "twinge" in her left thumb. Claimant could no longer tolerate the pain, and Claimant reported her symptoms to management. An accident report was completed by Respondent, and Claimant was referred to Dr. Lygrisse for treatment.

Dr. Lygrisse's records dated August 5, 2021, state Claimant reported pain in her left thumb and wrist from stacking chips at work. Claimant denied suffering an injury from a blow or an acute event. A physical examination included clinical tests suggesting the presence of deQuervain's tenosynovitis. An x-ray was interpreted as showing mild degenerative changes and no acute bony abnormality of the left thumb. Dr. Lygrisse's records state Claimant's date of injury was August 1, 2021. Claimant was prescribed a splint and Tylenol, and work restrictions were imposed.

On August 9, 2021, Claimant returned to Dr. Lygrisse's office. According to Dr. Lygrisse's note, Claimant stated she sustained an injury to the left thumb on August 1, 2021, when she felt a "twinge" in the thumb. At the preliminary hearing, Claimant denied saying she sustained an acute injury. Physical examination was notable for tenderness at the palmar aspect of the left thumb. Claimant was diagnosed with a left thumb strain, improving, and occupational therapy was recommended. Claimant's work restrictions continued.

Further medical treatment was denied by Respondent. Claimant provided Dr. Lygrisse's work restrictions to Respondent, and was told no accommodated work was available. Claimant last worked for Respondent on August 5, 2021.

Claimant sought medical treatment on her own with Dr. Kortje, who saw Claimant on August 16, 2021. According to Dr. Kortje's records, Claimant reported a gradual onset of left hand pain following an incident at work. The "incident at work" was described as overuse from dealing cards, with Claimant feeling a "twinge" a month ago and getting worse. Examination of the left hand indicated pain at the left hand and base of the thumb. Dr. Kortje diagnosed thumb tendinitis, which he thought was "clearly" an overuse syndrome from work.<sup>1</sup> Dr. Kortje also completed an FMLA application, stating Claimant sustained an injury from an overuse syndrome from dealing cards at work, which was directly related

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<sup>1</sup> P.H. Trans., Cl. Ex. A2.

to Claimant's job. Additional medical treatment was recommended, and Dr. Kortje took Claimant off work.

Claimant attempted to start physical therapy, but it was suspended after the provider learned Claimant's condition may be work-related.

Claimant sought authorized medical treatment and temporary total disability compensation at the preliminary hearing held on November 9, 2021. At the hearing, Respondent confirmed it was disputing compensability because Claimant's alleged repetitive trauma was not demonstrated by diagnostic or clinical tests.<sup>2</sup> Following the hearing, ALJ Marchant issued the preliminary order. ALJ Marchant reviewed Claimant's course of medical treatment, noting clinical tests were administered by the health care providers confirming Claimant sustained deQuervain's tenosynovitis. ALJ Marchant also found Claimant's work for Respondent was repetitive. ALJ Marchant concluded Claimant met her burden of proving she sustained an injury from repetitive trauma arising out of and in the course of her employment with Respondent. Respondent was ordered to provide a list of two physicians, from which Claimant would select one to serve as the authorized treating physician, as well as temporary total disability compensation. These review proceedings follow.

### **PRINCIPLES OF LAW AND ANALYSIS**

Respondent argues the preliminary Order should be reversed, because Claimant initially alleged she sustained an injury from a single date of accident, but later testified she did not suffer an injury from an accident. Respondent also argues Claimant did not meet her burden of proving repetitive trauma because the radiologic test administered by Dr. Lygrisse showed degenerative changes, and does not satisfy K.S.A. 44-508(e). Claimant argues the preliminary Order was correctly decided and should be affirmed.

It is the intent of the Legislature the Workers Compensation Act be liberally construed only for the purpose of bringing employers and employees within the provisions of the Act.<sup>3</sup> The provisions of the Workers Compensation Act shall be applied impartially to all parties.<sup>4</sup> The burden of proof shall be on the employee to establish the right to an award of compensation, and to prove the various conditions on which the right to compensation depends.<sup>5</sup>

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<sup>2</sup> See P.H. Trans. at 7.

<sup>3</sup> See K.S.A. 44-501b(a).

<sup>4</sup> See *id.*

<sup>5</sup> See K.S.A. 44-501b(c).

An injury by repetitive trauma shall be compensable only if employment exposes the worker to an increased risk of injury, the employment is the prevailing factor in causing the repetitive trauma and the repetitive trauma is the prevailing factor in causing the medical condition.<sup>6</sup> Moreover, the repetitive nature of the injury must be demonstrated by diagnostic or clinical tests.<sup>7</sup>

In this case, it is uncontested Claimant's work for Respondent requires constant, repetitive use of both hands. There is no evidence Claimant developed her symptoms from other activities outside work. Claimant consistently testified she did not suffer injuries from an accident. Instead, Claimant described the gradual onset of symptoms in her left thumb and hand, progressively worsening, and culminating in the sudden onset of left thumb pain on August 1, 2021, characterized by Claimant as a "twinge." Although Dr. Lygrisse's office assigned an accident date of August 1, 2021, Claimant denied reporting an injury by accident and Dr. Lygrisse's records do not contradict Claimant's testimony. Moreover, Dr. Kortje's records confirm Claimant sustained a work-related injury by repetitive trauma.

Respondent's argument the claim for compensation must fail because Claimant did not show via radiologic tests the repetitive nature of her injury also fails. The plain language of K.S.A. 44-508(e), states the repetitive nature of an injury by repetitive trauma must be proven by diagnostic or clinical tests. The plain language does not limit the tests to radiologic studies. Both Dr. Lygrisse and Dr. Kortje performed extensive clinical tests confirming the presence of an injury by repetitive trauma. Those tests satisfy K.S.A. 44-508(e).

Claimant met her burden of proving she sustained injuries to her left thumb and hand from repetitive trauma arising out of and in the course of her employment with Respondent. The preliminary Order issued by ALJ Marchant, dated November 23, 2021, should be affirmed.

### **DECISION**

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member the Order of Administrative Law Judge Ali Marchant, dated November 23, 2021, is affirmed.

**IT IS SO ORDERED.**

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<sup>6</sup> See K.S.A. 44-508(f)(2).

<sup>7</sup> See K.S.A. 44-508(e).

**LORRIE LOTT**

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Dated this \_\_\_\_\_ day of March, 2022.

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**WILLIAM G. BELDEN**  
**BOARD MEMBER**

c: Via OSCAR  
Jordan Shaw  
Timothy A. Emerson  
Hon. Ali Marchant