

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

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|--|---|----------------|
| JUDDIE JORDAN |) | |
| Claimant |) | |
| V. |) | |
| |) | AP-00-0463-842 |
| UNIVERSITY OF KANSAS HOSPITAL AUTHORITY |) | CS-00-0441-522 |
| Respondent |) | |
| AND |) | |
| |) | |
| SAFETY NATIONAL CASUALTY CORP. |) | |
| Insurance Carrier |) | |

ORDER

Claimant appealed the February 11, 2022, Award by Administrative Law Judge (ALJ) Troy A. Larson. The Board heard oral argument on June 16, 2022.

APPEARANCES

John G. O'Connor appeared for Claimant. Anemarie D. Pruitt appeared for Respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the Independent Medical Examination Report of John B. Moore dated June 30, 2020; transcript of Regular Hearing from October 12, 2021; Evidentiary Deposition of Juddie M. Jordan from November 17, 2021, with exhibits attached; Evidentiary Deposition of Daniel D. Zimmerman, M.D., from November 23, 2021, with exhibits attached; Evidentiary Deposition of Brian J. Divelbiss, M.D., from December 2, 2021, with exhibits attached, and the documents of record filed with the Division.

Respondent filed a Motion to Strike Claimant's brief because it failed to conform to the Kansas Department of Labor, Division of Workers Compensation Practice and Procedure Guide. Respondent's Motion is overruled. The Practice and Procedure Guide is a guide and there is no authority for this Board to strike a party's brief for failing to conform to the Practice and Procedure Guide.

ISSUE

Are Claimant's repetitive work duties for Respondent the prevailing factor for Claimant's bilateral carpal tunnel syndrome, need for medical treatment and resulting impairment?

FINDINGS OF FACT

Claimant worked for Respondent for 12 years, as a patient registration specialist. This job requires the use of a computer keyboard and computer mouse to fill out forms on the computer for 7 hours a day. Claimant completed 13 patient forms per hour.

In the middle of 2016, Claimant began noticing numbness in her left wrist and saw Dr. Hannah Maxfield, her primary care physician, in January 2017. Claimant reported pain in her wrist and into her fingers. Claimant was referred to neurologist, Dr. Dubinsky, who ordered EMG testing and instructed Claimant to purchase a wrist brace. Claimant used the wrist brace for a month.

Claimant was on medical leave from February 2017 to June 2017 for a non-work related ankle injury. During the four months she was off work, she had relief from the symptoms in her left wrist. When Claimant returned to work in June 2017, she noticed her symptoms in her left wrist and hand again. Claimant began noticing and symptoms in her right wrist about six to seven months after her return to work. When Claimant returned to work she wore her left wrist brace.

Claimant returned to Dr. Maxfield in October 2018 and Dr. Dubinsky again in November 2018, complaining of weakness and numbness in her right hand making it difficult to grab and hold a pencil. Claimant also reported numbness in the left hand like the right, but denied pain or weakness on the left. Claimant had additional EMG testing and was diagnosed with bilateral carpal tunnel syndrome. Surgery was recommended. Claimant had left carpal tunnel surgery in February 2019 and right carpal tunnel surgery on July 15, 2019. Claimant had relief from the surgeries and occasionally has some numbness with use of the hands and forearms. Claimant reported slightly less strength in the right versus the left.

Claimant believes her bilateral carpal tunnel syndrome was caused by her work with Respondent because when she was off work for her broken ankle, she had relief in her symptoms and the symptoms returned when she resumed work.

Claimant filed a workers compensation claim for a repetitive trauma injury on November 1, 2018. Claimant was sent to occupational health on November 2, 2018, for x-rays and physical therapy. Respondent referred Claimant to Dr. Divelbiss.

Dr. Brian Divelbiss examined Claimant on December 19, 2018, at Respondent's request. Dr. Divelbiss is board certified in orthopedic surgery and specializes in upper extremities. Claimant's chief complaint was bilateral carpal tunnel syndrome. Claimant reported a two-year history of right hand numbness and tingling and an eight month history of left hand numbness and tingling. Claimant reported an increase in the frequency and severity of the episodes of her numbness. The numbness was not constant, but intermittent on a daily basis and usually occurred multiple times a day. She wore wrist braces at night and still had numbness and tingling, especially when she holds a block or a phone for a period of time or when she typed at work. Claimant had a prior nerve study on October 24, 2018, and the results were consistent with mild bilateral carpal tunnel syndrome.

Dr. Divelbiss examined Claimant and diagnosed bilateral carpal tunnel syndrome. He found no evidence proving Claimant's computer keyboard work caused her carpal tunnel syndrome or her work was the prevailing factor for the condition. At most, Claimant's work aggravated the condition. He opined it was more likely Claimant's gender and age, which were two of the three factors causing the condition. Claimant was 61 years old as of November 2017.

Dr. Divelbiss opined carpal tunnel syndrome is an idiopathic condition and no one knows the cause, but is multi-factorial. Carpal tunnel syndrome can be caused by a traumatic event like a car accident or a fall. However, according to Dr. Divelbiss, individuals who type a lot are not at an increased risk. He testified individuals who over 60 years old and female are the two factors associated with the onset of carpal tunnel syndrome. He also testified diabetes, hypothyroidism inflammatory arthritis, such as rheumatoid or psoriatic arthritis are conditions predisposing a person to develop carpal tunnel syndrome. Claimant did not have any these conditions, other than being female and over 60 years old.

Dr. Divelbiss testified the medication Claimant took for her ankle injury likely relieved her carpal tunnel syndrome symptoms while she was off work.

Dr. Daniel Zimmerman examined Claimant on September 26, 2019, at the request of her attorney. Dr. Zimmerman specializes in internal medicine. Claimant's complaints were pain and discomfort affecting the right and left hands, wrists, and digits and sensory symptoms associated with right and left carpal syndrome. It was found Claimant had mild bilateral carpal tunnel syndrome and she was suffering from residuals of the right and left carpal tunnel syndrome surgery. Claimant reported her pain came from the computer keyboarding she performed for her employment with Respondent. Claimant reported symptoms as early as November 1, 2016.

Claimant reported decreased grip strength and pain in the upper extremities radiating from the hands and wrists to the shoulders. Upon examination, Dr. Zimmerman

opined Claimant developed pain and discomfort affecting the right and left hands, wrists and digits in performing repetitive work duties in her employment with Respondent. She continued to have this pain and discomfort and therefore Dr. Zimmerman assigned a 7 percent combined impairment to the body as a whole, referencing the *American Medical Association Guides to Evaluation of Permanent Impairment 6th Edition*. He assigned 5 percent to the right upper extremity at the wrist, which equates to 3 percent to the body as whole and 6 percent to the left upper extremity at the wrist, which is 4 percent to the body as a whole. Rating Claimant's permanent impairment using the *American Medical Association Guides to the Evaluation of Permanent Impairment, 4th Edition* resulted in a 17 percent combined impairment to the body as a whole. There is a 10 percent impairment to the right upper extremity at the wrist, which equates to 6 percent body as a whole and 20 percent to the left upper extremity at the wrist which equates to 12 percent body as a whole. Dr. Zimmerman opined the 7 percent rating did not accurately reflect Claimant's impairment and with a reasonable degree of medical certainty Claimant's impairment would be 17 percent when relating to the amount of keystrokes Claimant performed in a work day.

Dr. Zimmerman found the keyboard computer work Claimant performed for Respondent was the prevailing factor for Claimant's need for carpal tunnel surgery. He was not able to find any preexisting medical conditions which predisposed Claimant to suffer from median nerve compressions in the upper extremities.

Dr. Zimmerman found Claimant's condition to be stable and did not warrant further treatment, and placed Claimant at maximum medical improvement. Dr. Zimmerman also opined it is more probably true than not Claimant will need additional medical treatment in the future, like anti-inflammatory medication or injections.

He also recommended restrictions of no lifting more than 20 pounds occasionally; 10 pounds frequently; avoid frequent flexing, extension, twisting; torquing; pushing, pulling, hammering, handling, holding and reaching activities.

Dr. John Moore examined Claimant on June 20, 2020, at the request of the Court. Dr. Moore is board certified in plastic surgery, with the certificate added qualification surgery of the hand. This visit was post right and left carpal tunnel syndrome release surgery. Dr. Moore opined, although Claimant's carpal tunnel syndrome was mild, the surgery was reasonable. There was no reason to consider Claimant's carpal tunnel syndrome a work-related injury. Claimant has two factors predisposing her to carpal tunnel syndrome being female and over the age of 50. Dr. Moore opined activities, such as typing, could aggravate an underlying carpal tunnel syndrome, but there is no scientific evidence to support the finding keyboarding activity would be the prevailing factor in developing carpal tunnel syndrome. Dr. Moore opined there were a variety of keyboards and wrist splints Claimant could obtain to help alleviate some of the stress on the hands and forearms.

The ALJ found Claimant's work exposure was not the prevailing factor causing her carpal tunnel conditions and denied compensation.

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues she suffered an injury through repetitive trauma arising out of and in the course of her employment performing computer keyboarding for Respondent and requests the Board reverse the ALJ and award compensation based on a 7 percent permanent impairment to the body as a whole, payment of medical expenses and four weeks of temporary total disability benefits.

Respondent argues the Award should be affirmed and Claimant denied compensation.

K.S.A. 44-508(h) states:

"Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

K.S.A. 44-508(f) states:

(2) An injury is compensable only if it arises out of and in the course of employment. An injury is not compensable because work was a triggering or precipitating factor. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.

(A) An injury by repetitive trauma shall be deemed to arise out of employment only if:

(i) The employment exposed the worker to an increased risk or hazard which the worker would not have been exposed in normal non-employment life;

(ii) the increased risk or hazard to which the employment exposed the worker is the prevailing factor in causing the repetitive trauma; and

(iii) the repetitive trauma is the prevailing factor in causing both the medical condition and resulting disability or impairment.

K.S.A. 44-508(g) defines prevailing factor as "Prevailing as it relates to the term "factor" means the primary factor, in relation to any other factor. In determining what constitutes the "prevailing factor" in a given case, the administrative law judge shall consider all relevant evidence submitted by the parties."

Two upper extremity physicians opined Claimant’s job duties were not the prevailing factor for Claimant’s development of bilateral carpal tunnel. It is difficult to discount and overlook the medical opinions of two upper extremity specialists. Claimant’s medical evidence was given by an internal medicine physician not an upper extremity specialist. The opinions of the upper extremity specialists are more persuasive due to their specialty. It is found and concluded the prevailing factor for causing Claimant’s bilateral carpal tunnel is not Claimant’s job duties for Respondent. Claimant’s request for benefits is denied.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Troy A. Larson dated February 11, 2022, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of July, 2022.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: (Via OSCAR)

John G. O'Connor, Attorney for Claimant
Anemarie D. Pruitt, Attorney for Respondent and its Insurance Carrier
Hon. Troy A. Larson, Administrative Law Judge