

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TERI GAY CAMPBELL)	
Claimant)	
)	
VS.)	
)	
STATE OF KANSAS)	
Respondent)	Docket No. 1,052,935
)	
AND)	
)	
STATE SELF-INSURANCE FUND)	
Insurance Fund)	

ORDER

Claimant requests review of the March 13, 2013, Award by Administrative Law Judge (ALJ) Brad E. Avery. The Board heard oral argument on July 16, 2013.

APPEARANCES

Patrick C. Smith of Pittsburg, Kansas, appeared for claimant. Troy A. Unruh of Pittsburg, Kansas, appeared for respondent and its insurance fund (respondent).

RECORD AND STIPULATIONS

The Board has considered the entire record¹ and adopts the stipulations listed in the Award.

ISSUES

The ALJ found claimant sustained a 6.95% permanent partial impairment of function to each of her forearms at the 200-week level for claimant's bilateral carpal tunnel syndrome. Judge Avery also found a 6.66% permanent partial functional impairment to each of her arms at the 210-week level for claimant's bilateral cubital tunnel syndrome. The ALJ gave equal weight to the ratings of Drs. Melhorn, Prostic and Ketchum.

¹ The award does not list as evidence the transcript of preliminary hearing dated November 23, 2011. At oral argument, the parties agreed that the transcript is part of the record and it was considered by the Board.

Claimant argues the ALJ erred in according any credence to the rating opinions of Dr. Melhorn. Claimant contends the weight of the evidence supports a functional impairment of 10% to each arm for the cubital tunnel syndrome, thus rendering not credible Dr. Melhorn's opinions that claimant sustained no permanent impairment for the ulnar nerve entrapment at her elbows.²

Respondent maintains the ALJ erred in not basing claimant's permanent partial disability benefits (PPD) solely on the ratings of Dr. Melhorn. In the alternative, respondent contends the ALJ's Award should be affirmed.

The sole issue for the Board's review is: what is the nature and extent of claimant's disability?

FINDINGS OF FACT

Having reviewed the evidentiary record, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings:

When injured, claimant was employed by the state of Kansas as deputy clerk of the Bourbon County District Court, a position she had held for 23 years. Her job duties included taking money, pulling dockets for judges, pulling case files when copies were needed, keyboard entry, entering pleadings and scanning documents. These tasks required claimant to repetitively use her hands and arms for most of every working day.

In early 2009, claimant began having symptoms in her hands for which she initially sought treatment with her personal physician. Claimant underwent a nerve conduction study and was prescribed hand braces to wear when working. Claimant's use of the braces did not improve her pain. She again sought treatment in early 2010.

Respondent referred claimant to Dr. Scott Compton for treatment. Dr. Compton performed a right carpal tunnel release on April 29, 2010.

When the regular hearing was conducted, claimant continued to experience symptoms, increasing in severity in both upper extremities. She had numbness, tingling, and difficulty gripping. The gripping issues interfered with the retrieval of files and preparation of dockets.

Dr. Edward Prostic, a board certified orthopedic surgeon, evaluated claimant on December 10, 2010, at the request of claimant's attorney. The doctor reviewed claimant's

² At oral argument, claimant's counsel argued the ALJ erred in computing the amounts of PPD to which claimant is entitled. However, that issue was not raised in claimant's Request for Board Review or in claimant's brief. The Board accordingly deems the issue waived.

medical records, took a history and performed a physical examination. Dr. Prostic diagnosed bilateral cubital tunnel syndrome; left carpal tunnel syndrome; and right carpal tunnel syndrome successfully treated by surgical release. Dr. Prostic opined that claimant sustained repetitious minor trauma to both upper extremities.

Based upon the *AMA Guides*,³ Dr. Prostic rated claimant's bilateral cubital tunnel syndrome at 10% to each upper extremity and another 10% to each upper extremity for bilateral carpal tunnel syndrome.

Dr. Lynn Ketchum, a board certified hand surgeon, was appointed by the ALJ to conduct a neutral medical evaluation. Dr. Ketchum initially examined claimant on June 30, 2011. The doctor reviewed claimant's medical records, took a history and ordered a nerve conduction study. Dr. Ketchum recommended exercises and instructed claimant how to rearrange her work station. On November 23, 2011, the ALJ entered an order authorizing Dr. Ketchum to provide treatment.

On January 10, 2012, Dr. Ketchum performed a right cubital tunnel release. Dr. Ketchum thereafter rated claimant's permanent functional impairment per the *AMA Guides* at 10% to each arm for her bilateral cubital tunnel syndrome.

On July 31, 2012, claimant was evaluated by Dr. Mark Melhorn, a board certified orthopedic surgeon, at the request of respondent's attorney. The doctor reviewed claimant's medical records, took a history and performed a physical examination. Based upon the *AMA Guides*, Dr. Melhorn opined claimant sustained a 3.9% permanent functional impairment to each forearm for her bilateral carpal tunnel syndrome. The doctor concluded claimant sustained no impairment for her bilateral cubital tunnel syndrome.⁴

PRINCIPLES OF LAW

K.S.A. 2008 Supp. 44-501(a) states in part: "In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation by proving the various conditions on which the claimant's right depends."

K.S.A. 2008 Supp. 44-508(g) defines burden of proof as follows: "'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."

³ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *AMA Guides* unless otherwise noted.

⁴ Melhorn Depo. at 11-12.

ANALYSIS

The Board finds no error in the ALJ's determinations of claimant's permanent partial functional impairment. Under the circumstances of this claim, the ALJ properly accorded equal weight to the rating opinions of all three medical experts. The Board adopts Judge Avery's conclusions of law.

CONCLUSIONS OF LAW

The nature and extent of claimant's disability is: 6.95% permanent partial functional impairment to each forearm for claimant's bilateral carpal tunnel syndrome and 6.66% permanent partial functional impairment to each arm for claimant's bilateral cubital tunnel syndrome.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.⁵ Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

AWARD

WHEREFORE, it is the Board's decision that the Award of ALJ Brad E. Avery dated March 13, 2013, is hereby affirmed in all respects.

IT IS SO ORDERED.

Dated this _____ day of July, 2013.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

⁵ K.S.A. 2008 Supp. 44-555c(k).

c: Patrick C. Smith, Attorney for Claimant,
pat@pcs-law.com

Troy A. Unruh, Attorney for Respondent and its Insurance Fund,
tunruh@wntlaw.com

Brad E. Avery, ALJ