

The claimant requests review of whether she sustained a compensable accidental injury and whether she is entitled to medical treatment.

Respondent argues the Order should be affirmed, stating there are other factors that are just as likely to be the prevailing factor in causing claimant's carpal tunnel syndrome. In particular, respondent lists claimant's age, gender, obesity, and claimant's pregnancy during which time claimant first noted her symptoms.

FINDINGS OF FACT

After reviewing the record compiled to date, the undersigned Board Member concludes the preliminary hearing Order should be affirmed.

Claimant is claiming a series of repetitive traumas from January 1, 2011, through July 29, 2011, and is requesting authorization for medical treatment with board certified orthopedic surgeon, Erich J. Lingenfelter, M.D. Claimant alleges her repetitive work activities for respondent are the cause of her injuries. Claimant was hired to be a customer service representative and by the time she left respondent's employment, she was a sales and service representative. Claimant's work over the years involved talking to customers and doing data entry.

Claimant was off work for a while after having a baby on October 20, 2010. She returned to work in January 2011. Claimant denies having any symptoms of carpal tunnel or problems with her upper extremities during her pregnancy. Claimant testified that, in June 2011, her job duties changed and she was performing a lot of computer work and taking a lot of calls. Claimant testified that the keying and mouse work varied per customer call. She keyed anywhere from 35 to 50 words a minute and took anywhere from 60 to 80 calls a day. Before June 2011, claimant was taking 50-60 calls per day.

Claimant testified that she began to develop symptoms in her arms a few weeks after returning to work. She reported her symptoms in June 2011 to her primary physician, Dr. Susan Faulkner. Dr. Faulkner referred claimant to respondent indicating that the condition might be work-related. Wrist braces and an EMG were recommended. Claimant reported her symptoms to respondent who sent her to Concentra, where an EMG was ordered and she was given medication. Claimant met with Dr. Reed, who recommended surgery and was referred to Dr. Lingenfelter who also recommended surgery. Claimant was also sent to Dr. Stuckmeyer. Ultimately, claimant's claim for workers compensation was denied.

Claimant's current symptoms are tingling in the right arm; numbness and burning in the right hand and upper arms; pins and needles while she is sleeping and numbness and shooting pains in both hands and arms while she is typing. Claimant left respondent's employment on September 30, 2011, and has not worked anywhere since.

Claimant met with Dr. Stuart Kagan, at Concentra, on September 21, 2011, and was diagnosed with bilateral wrist tenosynovitis with bilateral carpal tunnel syndrome. Claimant was prescribed medication, electrodiagnostic studies were recommended and claimant was allowed to continue to work. The history provided to Dr. Kagan indicated problems over the past few years with worsening since July.

Claimant met with Dr. Jeffrey Kaplan, on October 13, 2011. Electrodiagnostic studies were performed and revealed mild to moderately severe bilateral carpal tunnel syndrome. Claimant was instructed to use wrist splints and to continue with medication. Dr. Kaplan reevaluated claimant on October 21, 2011, and diagnosed carpal tunnel syndrome and recommended a consultation with a hand surgeon.

Claimant met with Dr. William Reed, Jr., on November 1, 2011. Dr. Reed diagnosed carpal tunnel syndrome, worse on the right than the left. He discussed proceeding with bilateral endoscopic carpal tunnel releases.

On January 11, 2012, claimant met with Dr. Lingenfelter, who diagnosed claimant with carpal tunnel syndrome, but opined that it was difficult to determine the cause. He ultimately determined that claimant had preexisting carpal tunnel syndrome which can be aggravated by pregnancy, diabetes, thyroid dysfunction and obesity in a middle aged female. In his letter of February 24, 2012, he opined that claimant's job duties were only a contributing factor to the development of her carpal tunnel syndrome, equal to the other non-work factors. He was unable to say work was the prevailing factor in the development of claimant's bilateral carpal tunnel syndrome. He also noted the September 21, 2011, medical report from Concentra Medical Services indicating claimant's complaints began during her pregnancy, which he noted was a risk factor associated with the development of carpal tunnel syndrome.

Claimant had a functional job analysis on January 31, 2012, which determined that customer service representatives only leave their desks for lunch and spend the rest of their time seated at a computer workstation taking calls and using a keyboard. With the information from this analysis, Dr. Lingenfelter determined claimant did 25.2 motions per minute, equivalent to 5 words per minute. This did not place claimant at risk for traumatically induced carpal tunnel syndrome resulting from the repetitive motion and flexion of the fingers. However, Dr. Lingenfelter noted claimant challenged the findings of the ergonomic specialist report, indicating she did significantly more typing than the report stated.

Claimant was referred, by the ALJ, to board certified plastic and reconstructive hand surgeon, John B. Moore, M.D., for a consultation. The history provided to Dr. Moore indicated claimant would perform approximately 180 keystrokes per call, or 1,034 keystrokes and 404 mouse clicks per hour. He noted claimant's absence on maternity leave for approximately three months. On her return to regular duties claimant started noticing palmar numbness, numbness in the middle fo the night and dropping of objects.

However, he noted the information from Dr. Lingenfelter which identified a September 21, 2011, report from Concentra Medical Services indicating claimant's upper extremity complaints began during her pregnancy.

Dr. Moore diagnosed claimant with mild to moderately severe bilateral carpal tunnel syndrome. He reported that claimant's age, gender and weight were the contributing factors. He noted a Mayo Clinic study indicating no significant difference in EMG-positive carpal tunnel syndrome when comparing typists newly on the job to those who had been working approximately one year. He acknowledged that typing could be a contributing factor in the development of carpal tunnel syndrome. But, it is not a significant causative factor of EMG-positive carpal tunnel syndrome. He recommended conservative therapy and an endoscopic carpal tunnel release on both hands.

At the request of her attorney, claimant met with board certified orthopedic surgeon, James A. Stuckmeyer, M.D., on September 7, 2012, for an examination. Dr. Stuckmeyer noted that claimant had been evaluated by several physicians before being sent to him. Dr. Stuckmeyer diagnosed claimant with bilateral carpal tunnel syndrome. He noted the many risk factors involved in the development of carpal tunnel syndrome, including pregnancy, rheumatoid arthritis, trauma, diabetes and being a middle aged female. However, in his opinion, the most common cause of carpal tunnel syndrome is flexor tenosynovitis of the flexor tendons.

Dr. Stuckmeyer was aware of the Mayo Clinic study which debunked the use of computers and its relationship to carpal tunnel syndrome. But, he went on to caution that even the Mayo Clinic authors saw their study as only an important first step in the study of carpal tunnel syndrome and its relationship to the office environment. He saw the development of gel foam wrist supports and ergonomic keyboards as indications the industry saw a connection between the development of carpal tunnel syndrome and keyboards. Dr. Stuckmeyer agreed claimant had other risk factors, including her obesity and pregnancy. But he opined that the repetitive keyboarding, mousing, and answering the phone calls were the prevailing factors leading to the development of claimant's bilateral carpal tunnel condition. He recommended claimant observe work restrictions of no repetitive gripping or grasping with no pushing, pulling or lifting to exceed 10-15 pounds on an occasional basis and no repetitive keyboarding. Surgical intervention was also discussed.

PRINCIPLES OF LAW AND ANALYSIS

K.S.A. 2011 Supp. 501b(b)(c) states:

(a) It is the intent of the legislature that the workers compensation act shall be liberally construed only for the purpose of bringing employers and employees within the provisions of the act. The provisions of the workers compensation act

shall be applied impartially to both employers and employees in cases arising thereunder.

(b) If in any employment to which the workers compensation act applies, an employee suffers personal injury by accident, repetitive trauma or occupational disease arising out of and in the course of employment, the employer shall be liable to pay compensation to the employee in accordance with and subject to the provisions of the workers compensation act.

With the implementation of the 2011 version of the Kansas Workers Compensation Act (Act) workers compensation litigation in Kansas has changed.

The law in effect prior to May 15, 2011, held that in workers compensation litigation, it was not necessary that work activities cause an injury. It was sufficient that the work activities merely aggravated or accelerated a preexisting condition. This was also sufficient to find the condition compensable.¹ However, significant changes were made to the Act effective May 15, 2011.

K.S.A. 2011 Supp. 44-508(e) states:

(e) "Repetitive trauma" refers to cases where an injury occurs as a result of repetitive use, cumulative traumas or microtraumas. The repetitive nature of the injury must be demonstrated by diagnostic or clinical tests. The repetitive trauma must be the prevailing factor in causing the injury. "Repetitive trauma" shall in no case be construed to include occupational disease, as defined in K.S.A. 44-5a01, and amendments thereto.

In the case of injury by repetitive trauma, the date of injury shall be the earliest of:

(1) The date the employee, while employed for the employer against whom benefits are sought, is taken off work by a physician due to the diagnosed repetitive trauma;

(2) the date the employee, while employed for the employer against whom benefits are sought, is placed on modified or restricted duty by a physician due to the diagnosed repetitive trauma;

(3) the date the employee, while employed for the employer against whom benefits are sought, is advised by a physician that the condition is work-related; or

(4) the last day worked, if the employee no longer works for the employer against whom benefits are sought.

In no case shall the date of accident be later than the last date worked.

Before May 15, 2011, the effective date of the legislative changes, work activities had to merely aggravate or accelerate a condition, even one which preexisted the job, in order for the condition to be compensable. However, with the enactment of the changes to the Act, the Kansas legislature has sent a clear message. Repetitive trauma injuries

¹ *Harris v. Cessna Aircraft Co.*, 9 Kan. App. 2d 334, 678 P.2d 178 (1984).

now require the employment be the “prevailing factor” in causing the trauma, the medical condition and the resulting disability or impairment.

K.S.A. 2011 Supp. 44-508(f)(2)(A)(ii-iii) 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.

No longer does the mere aggravation of a condition allow for an award of compensation. Here the medical opinions conflict. Dr. Stuckmeyer, claimant’s expert, opined that claimant’s job duties were the prevailing factor leading to the development of her carpal tunnel syndrome, while acknowledging other significant risk factors. Dr. Moore, the court ordered evaluator, determined that claimants job duties are not the prevailing factor in the development of the carpal tunnel syndrome, citing a study at the Mayo Clinic in support of his findings. Finally, Dr. Lingenfelter found claimant’s job duties were a contributing factor, equal to many other factors, in the development of the carpal tunnel syndrome. Dr. Lingenfelter noted a September 9, 2011, Concentra Medical Services report which indicated claimants symptoms arose during her pregnancy, a finding claimant disputes.

The ALJ found the medical evidence unpersuasive on claimants behalf. He determined the opinions of Dr. Moore and Dr. Lingenfelter outweighed that of Dr. Stuckmeyer.²

This Board Member agrees with the analysis and decision of the ALJ. Claimant has failed to prove, by a preponderance of the credible evidence, that the development of her bilateral carpal tunnel syndrome was the result of her job duties with respondent. Claimant has failed to prove her job was the “prevailing factor” in the development of the carpal tunnel syndrome. The Order denying claimant benefits in this matter is affirmed.

² It is noted the ALJ mistakenly identified Dr. Stechsulte instead of Dr. Stuckmeyer in the preliminary Order.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.³ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2011 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

CONCLUSIONS

Claimant has failed to prove that her job duties with respondent were the prevailing factor in the development of her bilateral carpal tunnel syndrome. The Order of the ALJ denying claimant benefits is affirmed.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge Steven J. Howard dated January 16, 2013, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of March, 2013.

HONORABLE GARY M. KORTE
BOARD MEMBER

c: Michael W. Downing, Attorney for Claimant
mdowning@etkclaw.com

Kirby A. Vernon, Attorney for Respondent and its Insurance Carrier
cvernon@kirbyavernon.com
kvernon@kirbyavernon.com

Steven J. Howard, Administrative Law Judge

³ K.S.A. 2011 Supp. 44-534a.