

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

ALBERTA Q. MIGUEL)
Claimant)
V.)
NORCRAFT COMPANIES, LLC)
Respondent) Docket No. 1,064,339
AND)
TRAVELERS INDEMNITY CO.)
Insurance Carrier)

ORDER

STATEMENT OF THE CASE

Claimant requested review of the April 8, 2016, Award entered by Administrative Law Judge (ALJ) Thomas Klein. The Board heard oral argument on July 22, 2016. Conn Felix Sanchez of Kansas City, Kansas, appeared for claimant. Clifford Stubbs of Kansas City, Kansas, appeared for respondent and its insurance carrier (respondent).

The ALJ found claimant met with personal injury by accident on January 8, 2013, but suffered no permanent impairment as a result. The ALJ determined claimant is not in need of future medical treatment, based on the overwhelming medical evidence.

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

Claimant argues the only substantial competent medical evidence proves he sustained a 25 percent impairment to the body as a whole based on injuries sustained while working for respondent.

Respondent contends the ALJ's Award should be affirmed. Respondent argues the overwhelming weight of the credible medical evidence, including that of the court-ordered physician, establishes claimant sustained no permanent impairment as a result of her work accident.

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

FINDINGS OF FACT

Claimant worked at respondent for approximately 12 years. In April 2012, claimant was placed in a position cutting wood using a large saw. Claimant explained she pushed the wood into the machine with her left hand and pulled the saw down with her right hand. Claimant stated she complained to her supervisor that this position was hurting her neck, and was then transferred to an inspecting job. Claimant indicated she worked primarily as an inspector after March 2013, though she would occasionally work the saw when asked to do so by respondent. Claimant worked at respondent until April 6, 2015.

Claimant testified she had no problems or injuries to her neck or shoulders prior to January 8, 2013. Claimant indicated she saw her personal physician for her complaints and was prescribed some medication for neck pain. Respondent did not send claimant for treatment related to her neck.

Claimant was initially examined by board certified physician Dr. Chris Fevurly at respondent's request on February 7, 2013, for an evaluation related to her low back. At that time, claimant complained of neck pain with concurrent headaches and pain in her upper back, worse on the right. Claimant completed a pain diagram indicating aching pain in her entire spine and right upper extremity.

Dr. Pedro Murati examined claimant at her counsel's request on April 17, 2013. Claimant's chief complaints were pain in her neck and upper back, pain in both upper extremities, and that her left hand falls asleep. Dr. Murati reviewed claimant's history, medical records, and performed a physical examination. He provided the following impression:

1. Bilateral carpal tunnel syndrome.
2. Bilateral rotator cuff sprain versus tear, the left with probable labral involvement.
3. Myofascial pain syndrome of the bilateral shoulder girdles extending into the cervical and thoracic paraspinals.¹

Dr. Murati recommended restrictions:

The restrictions I place on this claimant are based on an eight-hour workday. In an eight-hour day no ladders, crawling, heavy grasp with both hands, above-shoulder work with both arms; no lift/carry/push/pull greater than 35 pounds, that only occasionally, frequently 20 pounds; repetitive grasp only occasional and repetitive

¹ Murati Depo., Ex. 3 at 3.

hand controls frequently; no work more than 24 inches from the body on both arms; avoid awkward positions of the neck; use wrist splints at home bilaterally; avoid trunk twist; and no use of knives bilaterally; and no use of vibratory tools bilaterally.²

Dr. Murati wrote that all of claimant's conditions were the result of her work-related accident and recommended conservative treatment.

Respondent referred claimant to board certified orthopedic surgeon Dr. David Clymer on October 9, 2013. Claimant complained of ongoing pain, numbness, tingling and weakness in her neck, back, and both shoulders. Dr. Clymer reviewed claimant's history, available medical records, and performed a physical examination. He took x-rays of claimant's neck and both shoulders, which he indicated were normal. Dr. Clymer testified:

I noted that she had some subjective complaints but that those were rather diffuse and nonspecific, including the neck and both shoulders. I noted that I really found no objective clinical neurologic or radiographic abnormalities and I did not find anything which would require treatment nor specific limitations or impairment.³

Dr. Clymer stated he was unable to identify any ratable permanent impairment during his evaluation. He noted in his report claimant had some hypersensitivity and generalized symptom magnification. Dr. Clymer suggested claimant exercise and remain physically fit, but he did not suggest any specific medical treatment related to her neck or upper extremities.

Court-ordered physician Dr. Mark Melhorn examined claimant on April 1, 2014, for independent medical evaluation purposes. Claimant's chief complaint was painful bilateral upper extremities. She completed a pain diagram, where she indicated discomfort in her neck and shoulder areas, but did not mark any specific complaints below her elbows. Dr. Melhorn reviewed claimant's history, medical records, and performed a physical examination, diagnosing claimant with painful right and left upper limbs, including the neck. Dr. Melhorn testified he based his diagnosis from claimant's subjective complaints. He wrote:

[G]iven her subjective complaints, which are diffuse, non-specific and do no [sic] represent a specific pathoanatomical etiology or distribution, the objective findings on examination are normal without specific objective findings to identify a pathoanatomical etiology, and her normal radiographic exam, my feeling is that she continues to have subjective complaints of discomfort with regard to the neck and

² Murati Depo. at 13-14.

³ Clymer Depo. at 11.

shoulder area. I am unable to identify a specific objective cause for these subjective complaints.⁴

Dr. Melhorn testified he did not provide an impairment rating because he had no objective findings. He suggested claimant's work hours be modified to a 45-hour maximum per week with 1-2 consecutive days off because it was possible claimant lacked the general endurance tolerance to work more hours within her job tasks.

Claimant returned to Dr. Murati, at her counsel's request, on March 4, 2015. Her chief complaints were pain in her neck and upper back, shoulder pain that shoots to her elbows, hands which fall asleep, and pain in her neck that causes headaches. Dr. Murati reviewed claimant's updated history and available medical records. He performed a physical examination and recorded the following impressions:

1. Bilateral carpal tunnel syndrome.
2. Bilateral rotator cuff syndrome.
3. Myofascial pain syndrome of the bilateral shoulder girdles extending into the cervical and thoracic paraspinals.⁵

Dr. Murati's recommended restrictions remained unchanged from April 2013. He opined:

The claimant sustained multiple repetitive traumas at work, which resulted in bilateral upper extremity, neck and upper back pain. . . . She has no significant preexisting injuries that would be related to her current diagnoses. . . . She does have degenerative joint disease preexisting to this injury. However, she was apparently completely asymptomatic before this incident as there is no history that I have been made aware of to support the claimant having a shoulder condition prior to the accident in question. . . . Even if the joint degeneration is a significant factor, then through a series of repetitive traumas at work enough permanent structural anatomical change happened in the joint to make a previously asymptomatic condition symptomatic, necessitating treatment. She has significant clinical findings that have given her diagnoses consistent with her described multiple repetitive traumas at work. Apparently, on this claimant's date of injury, she sustained enough permanent structural change in the anatomy of her shoulders, wrists, neck and upper back which caused pain necessitating treatment. Therefore, it is under all reasonable medical certainty and probability that the prevailing factor in the development of her conditions is the multiple repetitive traumas at work.⁶

⁴ Melhorn Depo., Ex. 2 at 6.

⁵ *Id.* at 4.

⁶ Murati Depo. at 14-17.

Using the *AMA Guides*,⁷ Dr. Murati determined claimant sustained a combined 25 percent impairment to the body as a whole. He explained:

[F]or the right carpal tunnel syndrome, using table 16, this claimant receives 10 percent right upper extremity impairment. For the mild glenohumeral crepitus, using tables 18 and 19, this claimant receives 6 percent right upper extremity impairment. These right upper extremity impairments combine for 15 percent right upper extremity impairment, which converts for 9 percent whole person impairment. For the left carpal tunnel syndrome, using table 16, this claimant receives 10 percent left upper extremity impairment. For the mild glenohumeral crepitus, using tables 18 and 19, this claimant receives 6 percent left upper extremity impairment. These left upper extremity impairments combine for 15 percent left upper extremity impairment, which converts for 9 percent whole person impairment. For the myofascial pain syndrome affecting the cervical paraspinals, this claimant is placed in cervicothoracic DRE category II for 5 percent whole person impairment. For the myofascial pain syndrome affecting the thoracic paraspinals, I place this claimant in thoracolumbar DRE category II for 5 percent whole person impairment. These whole person impairments combine for 25 percent whole person impairment.⁸

Claimant returned to Dr. Fevurly on August 6, 2015, again at respondent's request, with a primary complaint of constant neck pain with concurrent headaches. She completed another pain diagram at this visit, indicating a burning sensation from the low back to the base of the neck. She did not indicate any symptoms in her shoulders or upper extremities on the pain diagram.

Dr. Fevurly reported an assessment of "[r]ecent onset of regional neck and upper back pain with associated right arm pain."⁹ He noted claimant exhibited less symptom magnification than she did at the 2013 visit. Dr. Fevurly tested claimant's neck and upper extremities but could find no objective evidence of an injury. He indicated claimant had no ratable impairment to her neck, shoulders, or upper extremities and did not require any permanent restrictions.

Claimant testified she continues to have pain in her neck and shoulders. She is not currently undergoing medical treatment for her neck and shoulders. Claimant takes over-the-counter medication for her pain.

⁷ American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

⁸ Murati Depo. at 17-18.

⁹ Fevurly Depo., Ex. 2 at 9.

PRINCIPLES OF LAW

K.S.A. 2012 Supp. 44-501b(c) states:

The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

K.S.A. 2012 Supp. 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.

ANALYSIS

The ALJ found claimant failed to prove she sustained permanent impairment. The Board agrees. The overwhelming weight of the evidence supports a finding claimant suffered no impairment related to her work-related injury. Drs. Fevurly, Clymer and Melhorn each testified claimant sustained no permanent impairment related to her work injury.

In a pain drawing done prior to Dr. Fevurly's February 7, 2013, examination, claimant noted aching pain throughout her spine, with aching down to her right shoulder and forearm.¹⁰ On the same date, Dr. Fevurly recorded symptoms from claimant of constant cervical pain and an aching right arm. Claimant denied numbness in the right arm. Claimant did not note any symptoms in her shoulders or arms in the pain drawing she did for Dr. Fevurly on August 6, 2015.

On October 9, 2013, Dr. Clymer noted pain, numbness and tingling involving the neck, back, and shoulders with discomfort in the left arm. Dr. Melhorn, on April 1, 2014, noted painful left and right upper extremities and neck. A pain drawing provided to Dr. Melhorn by claimant indicated pain in the neck and upper arms.¹¹

The only physician to provide an impairment rating is Dr. Murati. Dr. Murati assessed impairment to claimant's neck, shoulders and wrists. Dr. Murati's assessment of impairment was contradicted by each of the other medical experts. Dr. Murati's ratings

¹⁰ See P.H. Trans., Resp. Ex. 3 at 12.

¹¹ See Melhorn Depo., Ex. 3.

for the hands and shoulders are also inconsistent with claimant’s pain drawings provided to Dr. Fevurly.

The evidence supports a finding that claimant suffered no impairment as a result of her January 8, 2013 injury by accident.

CONCLUSION

Claimant has failed to prove she suffered a permanent impairment as the result of her repetitive trauma injury.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Thomas Klein dated April 8, 2016, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of August, 2016.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Conn Felix Sanchez, Attorney for Claimant
snchzfelix@netscape.net
snchzfelix@aol.com

Clifford Stubbs, Attorney for Respondent and its Insurance Carrier
cstubbs@mvplaw.com
hkunze@mvplaw.com
mvpkc@mvplaw.com

Hon. Thomas Klein, Administrative Law Judge