

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

SHONTELLE EARSERY
Claimant

VS.

CESSNA AIRCRAFT COMPANY
Respondent,
Self-Insured

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Docket No. 242,067

ORDER

Claimant appealed the January 17, 2001 Award entered by Administrative Law Judge John D. Clark. The Board heard oral argument on July 25, 2001.

APPEARANCES

Joseph Seiwert of Wichita, Kansas, appeared for claimant. Kirby A. Vernon of Wichita, Kansas, appeared for respondent.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award. In addition, at oral argument before the Board the parties also agreed the Worksheet for Settlements prepared in Docket #192,501, along with the attached December 29, 1997 letter from Dr. Pedro A. Murati and the April 25, 1997 letter from Dr. George L. Lucas, should be included in the record.

ISSUES

This is a claim for bilateral upper extremity injuries allegedly caused by repetitive overuse from work. The parties stipulated the appropriate date of accident for the alleged period of injury is June 18, 1998.

In February 1998, claimant settled a claim against respondent for bilateral upper extremity injuries in an earlier claim, Docket #192,501. Therefore, the principal issue before the Judge in the present claim was whether claimant sustained additional permanent injury or permanent impairment following the first claimed bilateral upper extremity injuries. In the January 17, 2001 Award, Judge Clark found that claimant did not

sustain additional permanent impairment and, therefore, denied claimant's request for permanent partial disability benefits.

Claimant contends Judge Clark erred. Claimant argues that both her forearms have worsened following the first accidental injury and the February 1998 settlement. Therefore, claimant requests the Board to find a 51 percent permanent partial general disability based upon a 37.5 percent task loss and a 62.6 percent wage loss.

Conversely, respondent contends the Award should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Board finds and concludes:

1. The Award should be modified to grant claimant benefits for a 10 percent permanent functional impairment to the right upper extremity.
2. Claimant worked for respondent from April 1992 until she was terminated on December 22, 1999, for alleged misconduct.
3. In 1993 claimant began experiencing numbness and tingling in her hands as a result of her work activities. Claimant saw several physicians, including Dr. J. Mark Melhorn, who diagnosed bilateral carpal tunnel syndrome and in June 1996 recommended carpal tunnel release surgery. The next month, July 1996, claimant began treating with orthopedic surgeon Dr. George L. Lucas, who provided claimant with conservative treatment and eventually released her from treatment in approximately March or April 1997.
4. Claimant pursued workers compensation benefits for the upper extremity injuries that Dr. Lucas treated. That claim was designated Docket #192,501 and was settled in February 1998 based upon a 6.5 percent permanent partial general disability. The Worksheet for Settlements prepared for the settlement hearing recites "10/22/93 and each and every working day thereafter" as the date of accident for that claim. At the settlement hearing, the parties presented a December 29, 1997 letter from Dr. Pedro A. Murati and an April 25, 1997 letter from Dr. Lucas. According to Dr. Murati's letter, claimant had a 10 percent functional impairment to the left arm due to carpal tunnel syndrome, a three percent impairment to the left arm due to epicondylitis, and a three percent impairment to the right arm due to epicondylitis, all according to the fourth edition of the *AMA Guides to the Evaluation of Permanent Impairment (Guides)*. According to Dr. Lucas' letter, claimant had a three percent functional impairment to the left hand and a two percent functional impairment to the right hand. But Dr. Lucas' letter did not indicate if the ratings were based upon the *Guides*.
5. Following the February 1998 settlement, claimant continued to work for respondent doing precision assembly, which required claimant to use rivet guns, drill motors, C-

squeezes, drill presses, wrenches, sockets and hammers. In June 1998, claimant's job somewhat changed as she began to do more hammering and ordering parts, the latter activity requiring a lot of handwriting. Claimant then began experiencing additional upper extremity symptoms and in January 1999 sought additional treatment from Dr. Lucas, who then recommended and in August 1999 performed a left carpal tunnel release. Claimant contends her work activities commencing June 1998 permanently worsened the carpal tunnel syndrome in both upper extremities.

6. Respondent presented the deposition testimony of Dr. Lucas. The doctor testified that claimant's present functional impairment for her upper extremities is no greater than what it was in April 1997 when he rated the left hand functional impairment at three percent and the right hand impairment at two percent, despite the fact that claimant underwent a left wrist median nerve decompression in the interim and may need a similar procedure on the right wrist. Dr. Lucas also testified that his 1997 rating was pursuant to the *AMA Guides* but he did not specify the edition of the *Guides* and he did not consult the *Guides* to determine claimant's present functional impairment as he believed that claimant had not sustained any additional impairment. The doctor stated, in part:

Q. (Mr. Vernon) With regards to the 3 percent that you estimated in 1997, was that pursuant to the *AMA Guides*?

A. (Dr. Lucas) Yes.

Q. Thank you. In any event, did you feel it was necessary to refer to the *AMA Guides* as of her [claimant's] release on December 15, 1999?

A. Well, if you mean did I specifically get out the book and look them up, I certainly don't do that anymore.

Q. Was there a need to do that with regards to Ms. Earsery in light of the fact that you are of the opinion she did not sustain an increase in permanent impairment of function?

A. That is correct.¹

7. Claimant, on the other hand, presented the deposition testimony of Dr. Pedro A. Murati. The doctor examined claimant in both November 1996 and February 2000. In 1996, the doctor diagnosed left carpal tunnel syndrome, which he rated at 10 percent to the left upper extremity, and questionable right carpal tunnel syndrome, which he did not rate, along with bilateral epicondylitis. In February 2000, Dr. Murati diagnosed left carpal tunnel syndrome status post release and right hand pain secondary to carpal tunnel

¹ Deposition of Dr. George Lucas, October 23, 2000; pp. 10 and 11.

syndrome. In February 2000, Dr. Murati, utilizing the fourth edition of the *AMA Guides*, again rated claimant's left upper extremity functional impairment at 10 percent due to the carpal tunnel syndrome. But in the February 2000 evaluation, the doctor also found that claimant had sustained permanent functional impairment in the right upper extremity due to carpal tunnel syndrome, which he rated according to the *Guides* at 10 percent.

8. The Board finds and concludes that claimant has proven that she has sustained additional permanent injury and impairment to the right upper extremity only as the result of the work that she performed for respondent following her medical release in 1997. The 10 percent functional impairment to claimant's right upper extremity for the carpal tunnel syndrome is new as right carpal tunnel syndrome was not included in Dr. Murati's December 29, 1997 rating. The Board concludes that claimant developed permanent impairment in the right upper extremity due to the carpal tunnel syndrome following her 1997 medical release and return to work. Therefore, claimant is entitled to receive benefits for that additional 10 percent functional impairment that she has sustained to the right arm.

9. The Board finds that the evidence fails to establish that claimant has sustained any additional permanent injury or permanent functional impairment to the left arm over and above that impairment which claimant possessed following her first injury and claim which was settled in February 1998. The Board bases those conclusions upon Dr. Murati's opinions concerning claimant's functional impairment in November 1996 as compared to February 2000. The record indicates that Dr. Murati used the *AMA Guides* in rating claimant's functional impairment but the record fails to establish that Dr. Lucas did. Therefore, Dr. Lucas' opinions concerning claimant's residual functional impairment are entitled little weight.²

10. Because an upper extremity injury is listed in the schedules contained in K.S.A. 1997 Supp. 44-510d, claimant's permanent partial disability benefits are determined by that statute. The evidence indicates that claimant has median nerve compression in the right wrist. Therefore, claimant is entitled to permanent disability benefits for an injury to the forearm, or a maximum of 200 weeks. As provided by regulation,³ the 3.43 weeks of temporary total disability benefits are subtracted from the 200 weeks and the resulting number is then multiplied by the 10 percent functional impairment rating to yield 19.66 weeks of permanent partial disability compensation that claimant is entitled to receive as a result of the right upper extremity injury.

² See K.S.A. 1997 Supp. 44-510e, which defines functional impairment as physiological loss measured by the *AMA Guides*.

³ K.A.R. 51-7-8.

11. Nothing should be deducted from the functional impairment for the right carpal tunnel syndrome as the evidence fails to establish that claimant had preexisting functional impairment for that condition.⁴

12. The Board adopts the findings and conclusions set forth in the Award that are not inconsistent with the above.

AWARD

WHEREFORE, the Board modifies the January 17, 2001 Award as follows:

Shontelle Earsery is granted compensation from Cessna Aircraft Company for a June 18, 1998 accident and resulting disability. Based upon an average weekly wage of \$619.68, Ms. Earsery is entitled to receive 3.43 weeks of temporary total disability benefits at \$351 per week, or \$1,203.93, plus 19.66 weeks of permanent partial disability benefits at \$351 per week, or \$6,900.66, for a 10 percent permanent partial disability, making a total award of \$8,104.59, which is all due and owing less any amounts previously paid.

The Board adopts the remaining orders set forth in the Award that are not inconsistent with the above.

IT IS SO ORDERED.

Dated this ____ day of September 2001.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Joseph Seiwert, Attorney for Claimant
- Kirby A. Vernon, Attorney for Respondent
- John D. Clark, Administrative Law Judge
- Philip S. Harness, Workers Compensation Director

⁴ See K.S.A. 1997 Supp. 44-501(c).