

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

MARJORIE SHOCKEY ALVAREZ)	
Claimant)	
V.)	
)	AP-00-0475-193
SPECTRUM BRANDS HOLDINGS, INC.)	CS-00-0461-313
Respondent)	
AND)	
)	
LIBERTY INSURANCE CORPORATION)	
Insurance Carrier)	

ORDER

Respondent appealed the April 17, 2023, preliminary hearing Order entered by Administrative Law Judge (ALJ) Troy A. Larson.

APPEARANCES

Anna M. Mark appeared for Claimant. Deborah S. Johnson 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 Deposition of Marjorie Shockey Alvarez, taken November 4, 2021; transcript of Preliminary Hearing taken January 18, 2022; transcript of Preliminary Hearing taken October 4, 2022, with exhibits attached; Joint Stipulation dated April 10, 2023, with exhibits, attached and the documents of record filed with the Division.

ISSUE

Did Claimant sustain a personal injury by accident arising out of and in the course of employment?

FINDINGS OF FACT

Claimant started working through a temporary agency for Respondent in September 2020 and then was hired by Respondent in January 2021.

Claimant's job with Respondent was a warehouse worker. Her duties included pulling parts from various heights while operating a forklift and boxing those items up to be shipped.

On July 19, 2021, Claimant was driving a forklift and parked it. Claimant stepped off the forklift, which was about 12 inches above the ground. As Claimant stepped off the forklift, she fell onto a concrete floor on her stomach with both her arms out to her sides. After the accident, Claimant felt sore and heavy, like whiplash, on her left side. She thought she may have bruised her hip. Claimant reported the accident to her supervisor, and she continued with her workday.

Since July 19, 2021, Claimant developed heaviness, pain and numbness in her left arm. As a result of these symptoms in her left arm, Claimant used her right upper extremity more frequently. Claimant developed heaviness, pain and numbness in her right upper extremity more on the left than on the right. Claimant testified bending at the elbow makes the heaviness in her arms worse. She has difficulty gripping things and frequently drops things. Claimant has limited use of her arms and is no longer unable to lift 20 pounds.

On October 5, 2021, Respondent sent Claimant to Advent Health Care where she met with Dr. Ingrid B. Keleti. Claimant presented with heaviness, weakness and numbness in her left arm since July 19. Claimant reported she fell, landing on her side with arms stretched out attempting to protect her arms. It was concluded Claimant's symptoms were not consistent with the mechanism of the injury. The symptoms were consistent with carpal tunnel but such symptoms were not due to her accident. Claimant was advised to see an orthopedist through her primary care physician and wear wrist splints.

Claimant was evaluated by Dr. Prem Parmar on October 19, 2021, at the request of her attorney. Claimant reported a fall at work on July 19, 2021. She developed pain in her left elbow and over the next few weeks her entire left arm began to hurt. Claimant reported similar symptoms in her right arm due to overuse from compensating for the left arm. Dr. Parmar diagnosed tennis elbow in both arms, with the left being worse than the right. Dr. Parmar opined the symptoms in the right arm were due to overuse. He opined the prevailing factor for Claimant's left elbow issues was the traumatic injury on July 19, 2021, and for the right elbow repetitive activity and overuse. Dr. Parmar recommended physical therapy and cortisone injections and if conservative measures did not help, tennis elbow surgery was recommended for the left side first and then the right side.

Dr. J. Clinton Walker evaluated Claimant on December 30, 2021, at Respondent's request. Claimant was seen for reported pain in her left shoulder, right shoulder, left elbow, right elbow, left wrist, right wrist, left hand/fingers and right hand/fingers from a July 2021 fall. She also reported decreased grip strength. Claimant reported she fell forward onto her stomach, but did not recall reaching her arms out to catch herself or striking her arms.

Dr. Walker diagnosed left wrist pain and possible left carpal tunnel syndrome. It was determined the work injury was not consistent with being the prevailing factor for the suspected carpal tunnel syndrome. A comprehensive EMG/NCS was recommended and possible surgery.

Dr. Erich J. Lingenfelter evaluated Claimant on April 18, 2022, at the request of the Court. Claimant denied any problems prior to the accident, but since falling directly onto the palmar aspect of her wrist striking both on the floor, she had pain, numbness and tingling and occasional electric shooting pain up and down both arms. She had no other complaints in her elbows or shoulder.

Dr. Lingenfelter opined there was bilateral subjective numbness and tingling suggestive of carpal tunnel syndrome. He recommended an EMG of Claimant's bilateral upper extremities. Claimant denied any problems before the accident. She did report how the accident occurred and Dr. Lingenfelter wrote "one cannot dismiss the fact that carpal tunnel can be caused traumatically. Certainly a direct blow exactly over the carpal canal can initiate such symptoms".¹ He concluded it was likely the accidental injury was the prevailing factor for the complaints. He noted despite Claimant having diabetes it was not a factor in the diagnosis of bilateral carpal tunnel syndrome as her A1-C was 5.9 and was controlled.

On June 15, 2022, Dr. Lingenfelter confirmed the bilateral carpal tunnel and cubital tunnel diagnoses despite a negative EMG. Dr. Lingenfelter noted 10 to 15 percent of patients have negative EMG readings. He believed Claimant was one of those situations. He recommended four weeks of physical therapy with an occupational therapist. Claimant was allowed to continue with her normal duties and activities.

On August 8, 2022, Claimant reported she plateaued in her physical therapy and was not benefitting from the therapy. She reported severe bilateral numbness and tingling. Dr. Lingenfelter to rule out a double crush phenomenon he recommended an MRI of the neck. He assigned restrictions of repetitive forceful gripping or grasping, no prolonged wrist posturing and flexion, no repetitive flexion extension elbow, bilaterally.

Claimant continued to have numbness and tingling in the ulnar 2 digits and in the radial 3 digits, worse on the left compared to the right. On August 23, 2022, Dr. Lingenfelter reviewed the MRI of Claimant's cervical spine. The MRI revealed multilevel spondylosis not seeming to cause significant foraminal stenosis to explain Claimant's symptoms. He did not think it was likely a double crush phenomenon. He believed all reasonable conservative treatment had been exhausted and recommended carpal tunnel and cubital tunnels release surgery.

¹ Dr. Lingenfelter's Report (dated April, 27, 2022) at 4.

Dr. Lingenfelter testified Claimant at the first visit denied any prior symptoms of carpal tunnel and cubital tunnel syndrome, he could not say the conditions were preexisting, and the accident was not the prevailing factor. However, if Claimant did have symptoms before the accident as suggested by Dr. Gaddy's July 14, 2016, record Lingenfelter not seen, which had not improved before his visit with Claimant, then his opinion might change, and he would need to reexamine Claimant to determine whether those symptoms impacted his current diagnosis. However, given the information he had at the time, he stood by his diagnosis.

Dr. Lingenfelter responded to some questioning about the impact of Claimant's diabetes on her bilateral carpal tunnel.

So as the end of the paragraph I had commented, based on her history and what she reported to me that, as far as I'm concerned, the hemoglobin A1C would be immaterial unless at the time she presented with hemoglobin A1Cs that high and she was having nerve complaints. And I had explained that I felt that, although she is diabetic, it wouldn't give support to diabetes alone over what she reported me as a direct blow to her wrists.²

Claimant reported to Dr. Lingenfelter when she fell she smacked basically right down onto the volar side of her arm. He opined Claimant "falling on her side or falling on the stomach, that part of this piece makes no difference because they both can be ventrally positioned parts of the body, i.e., the forearm, wrist, elbow and stomach so forth."³

Respondent introduced Claimant's medical records from 2016 to 2022. Dr. Kathryn Foos was Claimant's primary care physician, who began seeing Claimant in 2017. Dr. Foos testified, to her recollection, Claimant has been diabetic since 2015. Dr. Foos testified Claimant had good control of her diabetes. She testified the A1C goal for diabetics is below 7 percent, but worry does not start until 8 percent or higher. Dr. Foos testified Claimant met with Dr. Burrell Gady in 2016, for right wrist pain and right hand pain. Dr. Gady diagnosed right wrist pain, possible ganglion cyst, and right hand numbness, probable early cubital tunnel syndrome. There were no further reference to problems with upper extremities in Claimant's medical records until after July 2021.

The ALJ found Claimant met her burden of proving a compensable accident.

While the Court acknowledges some slight discrepancies with how the various medical reports describe Claimant's fall, the basics remain largely the same. In a few circumstances, Claimant is reported as falling on her side, but most descriptions

² Lingenfelter Depo. at 8-9.

³ *Id.* at 23.

of the accident consist of Claimant falling forward and flat on the floor, onto her stomach. This is the description Claimant provided in her deposition testimony. As to whether Claimant held out her arms, or struck her arms on the floor, the Court finds any inconsistencies to be largely irrelevant. Even if Claimant held her arms out during the fall, her arms would have had to hit the floor at the same time as her chest/stomach, or shortly thereafter. Physics dictates that a body in motion tends to stay in motion. Once Claimant's chest/stomach hit the floor, it would have been virtually impossible for her arms to not also hit the floor, as they would have been in motion with the rest of her body. As such, Dr. Lingelster's opinion of the work injury traumatic event causing Claimant's symptoms is backed up by the evidence, and as the Court-ordered neutral IME physician, the Court finds Dr. Lingenfelter's opinion to be the least-biased and most persuasive.⁴

The ALJ ordered Respondent to provide a list of two physicians for Claimant to select from for authorized treatment on her bilateral upper extremities. Because Respondent could not provide accommodated work within Claimant's work restrictions the Court ordered Respondent to pay TTD benefits from April 18, 2022, through August 16, 2022. This period represents 17.29 weeks and amounts to \$11,111.42 at the agreed compensation rate of \$642.65.

PRINCIPLES OF LAW AND ANALYSIS

Respondent argues Judge Larson's decision was not correct based on the facts of the case and improperly relied on presumption and statements lacking credibility and failed to place the burden of proof on Claimant in finding her fall caused her to suffer a compensable traumatic injury to her bilateral upper extremities. Respondent argues the ALJ failed to consider the inaccuracies of Dr. Lingenfelter's report, the bias of Dr. Lingenfelter, the opinions of three other doctors, the changed testimony of Claimant over time, and the lack of any evidence of repetitive use causing her right carpal tunnel and cubital tunnel syndrome. Respondent contends the Board should reverse the ALJ and deny compensation.

Claimant argues the Order should be affirmed.

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.

⁴ ALJ Order at 3.

K.S.A. 44-508 (f)(2) states in part:

An injury is compensable only if it arises out of and in the course of employment .

..

(B) An injury shall be deemed to arise out of employment only if:

(i) There is a casual connection between the conditions under which the work is required to be performed and the resulting accident; and

(ii) the accident is the prevailing factor causing the injury, medical condition, and resulting disability and impairment.

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

“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.

It is not disputed Claimant fell stepping off a forklift. Respondent attempts to dispute the accident caused or was the prevailing factor for Claimant’s injuries. Respondent argues Claimant’s explanation of the position varied when she fell, which makes Claimant less credible. Dr. Lingenfelter, the Court-ordered doctor opined the position after falling is irrelevant because in either position Claimant struck her left upper extremity. Respondent then points to Claimant’s diabetes as a major factor in her upper extremity injuries. The medical evidence shows Claimant’s diabetes was controlled and as Dr. Lingenfelter stated, it could be a factor for her upper extremities complaints but Claimant’s recent fall is more of a factor than her diabetes. Respondent points to a 2016 ganglion cyst, which did not require any treatment and a notation Claimant could be developing carpal or cubital tunnel. Claimant had not complained or sought medical treatment for her upper extremities until after the 2021 accident.

This Board member agrees with the ALJ. The Court-ordered neutral doctor’s opinion is the most persuasive. The prevailing factor for Claimant’s injuries to her upper extremities is the work accident of July 19, 2021. Claimant suffered a personal injury by accident arising out of and in the course of her employment.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge Troy A. Larson dated April 17, 2023, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of July, 2023.

REBECCA SANDERS
BOARD MEMBER

c: Via OSCAR

Anna M. Mark, Attorney for Claimant
Deborah D. Johnson, Attorney for Respondent and its Insurance Carrier
Hon. Troy A. Larson, Administrative Law Judge