

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

<b>TARA SPEARS</b>	)	
Claimant	)	AP-00-0458-725
V.	)	CS-00-0442-456
	)	
<b>ACME FOUNDRY, INC.</b>	)	AP-00-0458-726
Self-Insured Respondent	)	CS-00-0442-457

**ORDER**

Claimant requests review of the June 28, 2021, preliminary hearing Order entered by Administrative Law Judge (ALJ) Steven M. Roth. William L. Phalen appeared for Claimant. Paul M. Kritz appeared for self-insured Respondent.

**RECORD AND STIPULATIONS**

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the Preliminary Hearing transcript held August 5, 2020, with exhibits attached; the Preliminary Hearing transcript held June 18, 2021, with exhibits attached; the Evidentiary Deposition transcript of Tara Spears held November 6, 2019, with exhibits attached; the Deposition transcript of Vito J. Carabetta, M.D., held May 10, 2021, with exhibits attached; the Evidentiary Deposition transcript of Jody Stritzke held June 17, 2020, with exhibits attached, and the documents of record filed with the Division.

**ISSUE**

Did Claimant sustain personal injury by accident arising out of and in the course of her employment, including whether the accident was the prevailing factor causing the injury, medical condition and disability?

**FINDINGS OF FACT**

Claimant began working for Respondent in late February or early March 2018. As part of the employment process, Claimant completed a pre-employment questionnaire. Claimant represented she was in good health and without any medical conditions limiting her ability to perform any form of manual labor for Respondent. Claimant underwent a pre-employment physical examination by Dr. Paul Sandhu on February 23, 2018. Dr. Sandhu

has acted as Respondent's company doctor for at least 24 years. He is familiar with the foundry and the type of work Respondent performs.<sup>1</sup>

As part of the pre-employment physical, Dr. Sandhu performed a physical examination and purportedly, a nerve conduction study. It is unclear if the test performed was a nerve conduction study or a neurometry test, which is less precise. Although the form titled "NERVE CONDUCTION STUDY" showed some motor and sensory limitations of Claimant's right median nerve, Dr. Sandhu cleared Claimant to work for Respondent. Specifically, he noted Claimant had no significant abnormalities and was physically fit to perform heavy labor.

Claimant applied for and was placed to work as an inspector. Essentially, Claimant cleaned metal and debris from metal parts. This required her to use a grinder and a metal hook. In using these tools, Claimant was required to flex and twist her wrist at different angles and tightly grip tools. Claimant repetitively applied force and pressure to the part being cleaned. Claimant worked ten hours per day, five days per week.

On May 11, 2018, Claimant felt pain in her right shoulder after lifting a heavy part and tossing it into a bin. Claimant reported her injury to the nurse. While talking with the nurse, Claimant also described numbness and tingling down into her right hand, specifically her third and fourth fingers, which had been present for three or four weeks prior to this injury.

Claimant was sent to Dr. Sandhu, who evaluated Claimant that day for right shoulder and hand pain. Dr. Sandhu's report noted Claimant had "CTS surgery on the other hand" and "pre employment tests do show Bilateral CTS mild."<sup>2</sup> Dr. Sandhu diagnosed Claimant with a right shoulder sprain and right carpal tunnel syndrome. He reduced Claimant's work hours to 8 hours per day with a maximum of 40 hours per week. He recommended she be placed in a different work station, take ibuprofen as needed, and follow-up in four weeks. Claimant was moved to the shell core room, which was light duty work.

Claimant returned to Dr. Sandhu on May 31, 2018, for follow-up. She reported her right shoulder pain was gone, but the numbness in her right hand and fingers persisted. She was happy with the move to the shell core job, which was easier on her hands and body. Dr. Sandhu's report noted:

The chart review does mention history of carpal tunnel syndrome a few years ago. The left hand had surgery with improvement, but the right hand never gave her any

---

<sup>1</sup> See Stritzke Depo. at 16.

<sup>2</sup> *Id.*, Ex. B5 at 1.

problem and nothing was done. We did nerve conduction studies in February of this year as part of the preemployment physical. She did show evidence of minimal CTS on the right hand. It is possible that the condition may have worsened or aggravated. We will try conservative treatment for another month. Recommendation: return to work in shell core. F/u 1 month, will repeat nerve conduction studies on the right hand. I have explained to [Claimant] that this is a preexisting condition and work may have aggravated it. How much? Will wait for the repeat study next month.<sup>3</sup>

Claimant terminated her employment with Respondent on September 8, 2018, because her job was too hard, she had difficulty breathing, she was told by Dr. Sandhu her hand would not be treated through workers compensation, and she felt her work was an unsafe environment.

Claimant completed a pre-employment medical questionnaire for Spears Manufacturing (Spears) on January 18, 2019. Claimant indicated she had no problems with numbness of her hands, had no prior job injuries, and was in good health. Claimant denied changing jobs due to health problems in the prior five years. Claimant began working for Spears on January 22, 2019. She continued working for Spears until Mother's Day 2020, when she was involved in a motor vehicle accident which rendered her physically unable to perform her job with Spears.

Claimant filed an Application for Benefits with the Division on April 10, 2019, claiming injury to her right hand and wrist while performing repetitious duties at Respondent on May 11, 2018.

Dr. Pedro Murati evaluated Claimant at her counsel's request on August 20, 2019. Claimant complained of numbness in her right hand, numbness and tingling in her right wrist, difficulty holding items, occasional right elbow tenderness, and occasional sharp chest pains. The only medical record available for Dr. Murati to review was the Coffeyville Clinic (Dr. Sandhu) May 11, 2018 report. The pre-employment records, including the "NERVE CONDUCTION STUDY," were not available for Dr. Murati to review. He opined Claimant suffered from right carpal tunnel syndrome and recommended diagnostic testing and conservative treatment, with surgical evaluation if Claimant failed to improve. By request, Dr. Murati did not provide restrictions. Dr. Murati opined the prevailing factor for Claimant's medical condition and need for treatment was the accident and the multiple repetitive traumas.

On December 17, 2019, Claimant underwent an EMG/NCS of her bilateral upper extremities with Dr. Sri Reddy. Dr. Reddy reported Claimant had right moderate median nerve entrapment at the wrist, or carpal tunnel syndrome. Upon request, Dr. Reddy provided an addendum on January 17, 2020:

---

<sup>3</sup> Stritzke Depo., Ex. B7 at 1.

I was requested to do a comparison with a screening median nerve conduction study done on 02-23-2018 in Coffeyville, KS and the study I did on 12-17-2019.

In comparing the median motor nerve conduction study values, they are essentially the same.<sup>4</sup>

Dr. Murati reviewed the EMG results, and in a letter dated March 19, 2020, indicated his professional medical opinions had not changed from his August 2019 report.

Dr. Vito Carabetta performed a Court-ordered independent medical evaluation on March 1, 2021. Dr. Carabetta reviewed Claimant's available medical records, history, and performed a physical examination. In his report, Dr. Carabetta found:

[Claimant's] electrodiagnostic studies were available in the records that were reviewed, and these give us considerable objectivity in terms of the results. The findings are interchangeable for all practical purposes when we compare her preemployment findings to that which was assessed following her employment with this company. There is no significant change identified. The results were consistent both times with a moderate degree of carpal tunnel syndrome.

Given the findings on her preemployment nerve conduction studies that were done, it is not logical to therefore find that her diagnoses of carpal tunnel syndrome would be causally related to the later injuries sustained from cumulative activities with a file date of May 11, 2018. This does not serve as the prevailing factor under the circumstances.<sup>5</sup>

Dr. Carabetta recommended conservative treatment, with injections or operative intervention if necessary.

Dr. Carabetta's deposition was taken on May 10, 2021. Dr. Carabetta testified the working diagnosis in his report "wasn't as accurate as it should have been."<sup>6</sup> Dr. Carabetta further testified Claimant does not have carpal tunnel syndrome, but suffers median nerve neuritis:

Q. Were there – well, you make a diagnosis of right carpal tunnel syndrome; correct?

A. Correct. That's what the diagnosis has been all along, so we've kept the diagnosis going.

---

<sup>4</sup> Stritzke Depo., Ex. B8 at 3.

<sup>5</sup> Carabetta Depo., Ex. 2 at 3.

<sup>6</sup> Carabetta Depo. at 32.

Q. So even in light of an essentially normal EMG testing, your diagnosis is right carpal tunnel syndrome?

A. Yes. If I were to split hairs, I would call this median nerve neuritis at the wrist. I don't think she has a compression neuropathy. I think the nerve is irritated. It probably has been the entire time.

Q. The entire time that she went to work at [Respondent]?

A. Correct.

Q. Because she wasn't having symptoms of a nerve irritation before she went to work at [Respondent]; correct?

A. That is correct.<sup>7</sup>

Dr. Carabetta explained median nerve neuritis and carpal tunnel syndrome are similar. Neuritis is irritation of the median nerve whereas carpal tunnel syndrome involves compression of the median nerve. Dr. Carabetta described median nerve neuritis as a process in which the tendons near the median nerve change over time with use, resulting in swelling. This swelling creates a chemical messenger which the median nerve senses, and often reacts by causing pain and limitation in function.

Dr. Carabetta's opinions regarding causation of Claimant's injury are somewhat confusing. He suggests Claimant had a "problem" when she began work for Respondent, but then opined the work for Respondent caused the chemical messengers resulting in nerve swelling and Claimant's symptoms. He testified:

Q. Well, Doctor, is it your opinion that the cause of the median nerve irritation is the work activities that she performed at [Respondent]?

A. I don't think you're going to like my answer. I'm certain that the work activities made it worse. I think she went into the job with a problem based on what the neurometry test picked up. And it was undetected by Dr. Sandhu in terms of what she had. They let her slip through the cracks. And then the work certainly brought the symptoms to the forefront rapidly.

...

Q. And what caused her median nerve irritation, then, was her work activities at [Respondent]; correct?

---

<sup>7</sup> *Id.* at 22.

A. They certainly did not help matters, that is correct.<sup>8</sup>

...

Q. So, Doctor, is it your opinion, then, that the work at [Respondent] caused these flexor tendons to send off these chemical messengers that resulted in the nerve swelling, resulting in the symptoms?

A. That would be a fair way to call it, yes.

Q. And so would it be fair to say the prevailing factor in causing these tendons to start sending out these chemical messengers would have been the work activities there at [Respondent]; correct?

A. Yes.<sup>9</sup>

Dr. Carabetta recommended corticosteroid nerve block, or surgery if the block proves unsuccessful for Claimant's neuritis.

Claimant continues to experience numbness in her right hand, numbness and tingling in her right wrist, difficulty holding items when her hand is numb, and occasional tenderness in her right elbow. Claimant sought medical treatment at a preliminary hearing.

The ALJ found Claimant had a preexisting non work-related condition becoming symptomatic only after her employment. Therefore, Claimant's right upper extremity injury did not arise out of and in the course of her employment in Case No. CS-00-0442-456.

Case No. CS-00-0442-457 was not addressed by the ALJ during the preliminary hearing.

Claimant argues the ALJ's Order should be reversed. Claimant contends she met with personal injury by accident arising out of and in the course of her employment. Claimant argues the repetitive use activities at Respondent was the prevailing factor in causing her median nerve neuritis and need for medical treatment.

Respondent maintains the ALJ's Order should be affirmed. Respondent argues whether Claimant suffered from carpal tunnel syndrome or median nerve neuritis, the condition, though asymptomatic, existed prior to her employment with Respondent.

---

<sup>8</sup> *Id.* at 23-24.

<sup>9</sup> *Id.* at 28.

PRINCIPLES OF LAW AND ANALYSIS

**Claimant sustained personal injury by accident arising out of and in the course of her employment.**

The undersigned Board Member reverses the ALJ's decision. Respondent denied Claimant's alleged accidental injury based upon K.S.A. 44-508(f)(2). An accidental injury is not compensable if work is a triggering factor or if the injury solely aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic. Respondent must prove any affirmative defenses.<sup>10</sup>

Respondent initially denied this claim based upon the opinions of its company physician, Dr. Sandhu. He opined Claimant had a preexisting condition, carpal tunnel syndrome, which may have been aggravated by her work activities. Dr. Sandhu's medical records lack clarity and are full of inaccuracies. He has been the company physician in excess of 24 years. He is familiar with the work being performed at Respondent. Dr. Sandhu cleared Claimant to work for Respondent. In so doing, he noted Claimant had no significant abnormalities and was physically fit to perform heavy labor. When Claimant returned to him for treatment, he opined she had a preexisting condition. Simply put, Dr. Sandhu's opinions are not credible.

At Respondent's request, Dr. Reddy performed EMG/NCS tests of Claimant's bilateral upper extremities and compared his results "with a screening median nerve conduction study done on 02-23-2018."<sup>11</sup> He did not provide any causation or prevailing factor opinions. This, coupled with the uncertainty of the 2018 test performed, renders his opinions unpersuasive.

Dr. Carabetta, the Court-ordered physician, believes neurometry testing accuracy wavers, and in this case, was performed by a technician, not a physician.<sup>12</sup> When specifically asked if the work for Respondent was the prevailing factor for the neuritis, Dr. Carabetta replied "yes."<sup>13</sup> According to Dr. Carabetta, Claimant's work produced a chemical reaction producing swelling in the median nerve compartment, which caused Claimant's neuritis.

---

<sup>10</sup> See *Johnson v. Stormont Vail Healthcare, Inc.*, 57 Kan. App. 2d 44, 445 P.3d 1183, *rev. denied* 311 Kan. 1046 (2020).

<sup>11</sup> Stritzke Depo., Ex. B8 at 3.

<sup>12</sup> See Carabetta Depo. at 16-17.

<sup>13</sup> *Id.* at 28.

The record establishes Claimant suffered personal injury by accident arising out of and in the course of her employment with Respondent. It is Respondent's burden to prove the affirmative defense Claimant's injury was merely an aggravation or acceleration of a preexisting injury. At this stage of the proceedings, insufficient evidence exists in the record to establish Claimant suffered from a preexisting condition at the time her employment with Respondent began.

**DECISION**

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member the Order of Administrative Law Judge Steven M. Roth dated June 28, 2021, is reversed and remanded for an order consistent with this decision.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of September, 2021.

---

CHRIS A. CLEMENTS  
BOARD MEMBER

c: Via OSCAR

William L. Phalen, Attorney for Claimant  
Paul M. Kritz, Attorney for Self-Insured Respondent  
Hon. Steven M. Roth, Administrative Law Judge