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By: Christopher McVeigh
Hearing Officer

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For the Defendant: John Boylan, III, Esq.

WITNESSES:

For the claimant:

Martha Somers
Dudley Baker, M.D. (by deposition)

For the defendant:

Kuhrt Wieneke, M.D. (by deposition)
Peter Upton, M.D. (by deposition)

EXHIBITS:

The following exhibits were admitted:

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| Joint Exhibit 1 | Dudley M. Baker, M.D.'s office notes; |
| Joint Exhibit 2 | Lawrence Jenkyn, M.D.'s office notes; |
| Joint Exhibit 3 | Peter D. Upton, M.D.'s March 9, 1992 report; |
| Joint Exhibit 4 | Kuhrt Wieneke, Jr., M.D.'s May 20, 1991 report; |
| Joint Exhibit 5 | Elizabeth M. Woodcock, D.C.'s May 31, 1991, letter to Attorney McCarty; |
| Joint Exhibit 6 | Keith R. Edwards, M.D.'s notes and reports; |
| Joint Exhibit 7 | John T. Nutting, M.D.'s office notes; |
| Joint Exhibit 8 | Peter D. Gibbons, M.D.'s radiology report; |
| Joint Exhibit 9 | Robert M. Naylor, M.D.'s report of the claimant's cervical spine; |
| Joint Exhibit 10 | various reports from Comprehensive Rehabilitation Associates, Inc. |

Claimant's Exhibits:

1. Dr. Dudley M. Baker's Deposition dated February 10, 1993.

Defendant's Exhibits:

1. Dr. Peter Upton's April 13, 1993 Deposition;
2. Dr. Kuhrt Wieneke's Deposition dated June 2, 1993.

FINDINGS OF FACT:

1. In 1987 the claimant was an employee as defined by Vermont's Workers' Compensation Act, and the defendant was an employer as defined by the Act.
2. In 1984 the claimant began working for Cepco, Inc., a firm involved in the manufacture of propeller blades, as a laborer and eventually worked her way up to a position as a precision grinder.
3. In performing her job, the claimant often rested her elbows on her knees and moved the blade being ground up and down. In this position her forearm did most of the work of moving the blade.
4. Within a year of starting her employment at Cepco the claimant began experiencing numbness in her wrists and hands which she attempted to remedy by using wrist bands. Still, the claimant experienced persistent symptoms of shooting pains from her wrists into her hands and fingers; the pain sometimes woke her at night.
5. Until 1987, the claimant did not treat her condition medically with any physician but subsequently sought medical treatment when her pain symptoms intensified. In 1987, the claimant left her employment at Cepco because of the pain in her wrists and hands.
6. In March 1987, Dr. Lawrence Jenkyn performed an EMG on the claimant; although she did not have the usual electrophysiological changes associated with carpal tunnel syndrome, Dr. Jenkyn concluded that she had clinical carpal tunnel syndrome bilaterally, and recommended surgery for her left wrist which had the more significant symptoms.
7. In April 1987, Dr. Kinley performed carpal tunnel surgery on the claimant's left wrist; unfortunately the surgery did not substantially alleviate her presurgical symptoms.
8. In a follow-up examination on November 30, 1987, Dr. Jenkyn noted that the claimant reported that her left hand pain radiated up to her left elbow, and that she still had problems with her left shoulder. Dr. Jenkyn placed the claimant at a medical end result in regard to her left arm problems on November 30, 1987.
9. The claimant subsequently began treating with Dr. Nutting in January 1988. Dr. Nutting diagnosed the claimant's condition as flexor pollicis longus tenosynovitis and recommended splinting in an attempt to relieve her symptoms. In his notes, Dr. Nutting recorded the claimant's complaint of left

and right hand pain but also noted that she had "painless range of motion of the elbow."

10. In July 1988, Dr. Nutting examined the claimant again and still noted that she had painless range of motion in her left elbow.
11. In January 1989, Dr. Nutting first recorded complaints concerning the claimant's left elbow noting that "she had left elbow pain radiating down the ulnar side of her left hand that she notices when she is sitting in a chair . . . and that she was tender in the "cubital tunnel," although she had a negative elbow flexion test. Dr. Nutting concluded that the claimant still suffered ongoing, unresolved symptoms to her left and right hand as a result of her work at Cepco, and that he thought she had left cubital tunnel syndrome which "may be related" to her employment at Cepco but about which Dr. Nutting expressed some doubt because of her failure to complain about that condition to him previously. Dr. Nutting also concluded that the claimant demonstrated evidence of median nerve compression at the right wrist.
12. The claimant began treating at the Woodcock Chiropractic Clinic in Brattleboro, Vermont, in October 1988 for bilateral shoulder pain and pain in her mid back. While recording the history in which the claimant stated that her back complaints came on gradually and that she felt they began after her carpal tunnel surgery, Dr. Woodcock diagnosed the claimant's condition as "obvious compensatory spinal scoliosis" and stated further that "tests and x-ray findings could be associated with numerous operations or bilateral carpal tunnel complications."
13. In May 1989, the claimant started treating with Dr. Dudley Baker for relief of her left and right hand pain symptoms. In light of her history and his examination of the claimant, Dr. Baker concluded that the claimant suffered bilateral carpal tunnel syndrome with postoperative scarring and neuritis on the left; Dr. Baker made no note of left elbow pain and referred the claimant to Dr. Edwards for an EMG study. Dr. Edwards subsequently concluded that the claimant suffered from median nerve problems bilaterally and recommended surgical release. After consultation with Dr. Baker, the claimant eventually agreed to try a surgical carpal tunnel release and underwent surgery for release on the right side in November 1989. This surgery gave the claimant significant relief of her right sided carpal tunnel symptoms.
14. In a December 8, 1989, office note, Dr. Baker recorded for the first time that the claimant has had discomfort since at least 1987 which extended "over the medial elbow on the left

extending to the little fingers and has had a diagnosis from the Hanover physicians of a cubitus tunnel syndrome." Dr. Baker's examination of the left elbow did not show any positive Tinel's sign.

15. On January 17, 1990, Dr. Baker performed a surgical release of the claimant's left wrist and surgically transposed her ulnar nerve in the left elbow. The claimant recovered slowly from this surgery but eventually reached a medical end result, according to Dr. Baker, on September 4, 1990.
16. In evaluating the claimant's permanent partial impairment, Dr. Baker noted that the claimant suffered decreased sensation in her left hand as well as cramping from excessive activity. In evaluating the permanent partial impairment of the left wrist and hand, Dr. Baker tested claimant by having her tactilely identify objects placed her left hand while she closed her eyes. Dr. Baker then judged the degree of the claimant's sensory loss by the claimant's proficiency in identifying the objects. Utilizing this testing procedure, Dr. Baker concluded that the claimant possessed 65 to 70 percent of the sensation in her left hand as compared with her right. Dr. Baker did not find any loss of range of motion, nor was muscle strength an issue for the claimant's left wrist/hand.
17. In determining the claimant's permanent partial impairment for her left hand/wrist, Dr. Baker relied upon the A.M.A. Guide for evaluating impairments as well as his experience and judgment, and assessed her permanent partial impairment as 25 percent of the upper left extremity. Dr. Baker noted that the median nerve, the nerve involved in carpal tunnel syndrome, was important to the hands as it provided the basic source of feeling and sensation to the hand. He believed that the claimant's carpal tunnel syndrome and subsequent surgeries had significantly restricted or reduced her left hand's sensory capacity.
18. Dr. Baker also assessed the claimant as suffering a 6 percent permanent partial impairment of the upper right extremity as a result of her carpal tunnel surgery at that site.
19. Dr. Baker also concluded that the claimant suffered a 5 percent impairment of the upper left extremity as a result of her left elbow condition and surgery, basing this conclusion, in part, on the discomfort the claimant experienced when she fully extended her elbow.
20. Dr. Baker believed that the claimant's left elbow condition was related to her employment at Cepco because, by history, he could point to no other incident or injury which could account for this problem and because the condition developed

at approximately the same time the claimant's carpal tunnel problems did. Dr. Baker acknowledged that the claimant did not complain to him about a left elbow problem until September 1989, even though he had been treating her since May 1989. When rendering his opinion on the causal connection between the claimant's left elbow problem and her work, Dr. Baker did not know the mechanics of how the claimant performed her job.

21. Dr. Baker also concluded that the claimant's back problems, for which she sought chiropractic treatment at the Woodcock Clinic were related to the claimant's April 1987, carpal tunnel syndrome in that her use of a cast and sling caused her upper dorsal spine discomfort and left shoulder blade discomfort. Dr. Baker did not render any specific permanent partial impairment rating for this claim but concluded in his January 29, 1993, office visit that any permanent impairment for this condition was offset by the improvement in the claimant's right wrist and hand impairment.
22. On May 20, 1991, Dr. Kuhrt Wieneke examined the claimant at the defendant's behest. Dr. Wieneke concluded that the claimant suffered a 5 percent permanent partial impairment of the upper right extremity as a result of her carpal tunnel surgery at that site; suffered an 8 percent permanent partial impairment of the upper left extremity of which he assessed 3 percent to the left elbow and 5 percent to the left hand/wrist.
23. In describing how he reached a 5 percent impairment for the left hand/wrist, Dr. Wieneke noted that the claimant had no loss of range of motion, no loss of strength, and no loss of sensation, and that the generally accepted impairment rating for any carpal tunnel surgery with a good result is a 5 percent permanent partial impairment. He also noted that the claimant's 2 point discrimination, for which he tested, was normal.
24. Dr. Wieneke also challenged the validity of Dr. Baker's testing method for determining permanency of the left hand/wrist, stating that object identification alone was not a valid testing method. Finally, Dr. Wieneke testified that even if the claimant lost 30 to 35 percent of the sensation in her left hand as compared to her right hand, the A.M.A. Guide for evaluation of permanent impairment allowed for only a 13 percent permanent partial impairment to the upper left extremity for this loss of sensation.
25. Dr. Wieneke also opined that no causal connection existed between the claimant's left elbow problem and her employment and based this conclusion on the fact that the claimant had not complained of left elbow symptoms until almost two years

after she stopped working at Cepco, and that ulnar palsy required pressure from a hard object or surface to cause the condition of which the claimant complained.

26. Dr. Wieneke acknowledged, however, that according to a Brattleboro physical therapist's records, the claimant had complained of left elbow pain as early as December 1987. He also acknowledged that he did not ask the claimant to demonstrate how she performed her job at Cepco, but expressed the opinion that leaning her elbows on her knees would not cause the claimant's elbow problem.
27. On March 9, 1992, Dr. Peter Upton examined the claimant at the defendant's request. Dr. Upton's examination and subsequent permanency determination only concerned the claimant's left elbow, wrist, and hand impairment.
28. Dr. Upton believed that the claimant suffered a 5 percent permanent impairment of her left upper extremity as a result of her carpal tunnel surgeries of the left wrist/hand. Although he thought the claimant's left wrist/hand had normal sensation, strength, and range of motion, Dr. Upton assigned his degree of permanency based on the claimant's residual symptoms for her carpal tunnel surgeries.
29. Although he questioned the work relatedness of the claimant's left elbow condition, Dr. Upton concluded that condition caused a 10 percent permanent partial impairment because of the elbow's lack of range of motion.
30. Dr. Upton could not relate the elbow condition to the claimant's work at Cepco because he did not possess any historical information indicating that the claimant suffered ulnar nerve problems while working. In addition, he relied heavily on the fact that, to his knowledge, the claimant's left elbow problem did not arise until a year or two after she stopped working at Cepco. Dr. Upton could not, however, state with great detail how the claimant performed her work at Cepco or how she held her forearms in performing that work.
31. The defendant offered to settle the claimant's left upper extremity claim by averaging Dr. Baker's permanent partial impairment rating of 25 percent with Dr. Wieneke's rating of 5 percent and Dr. Upton's rating of 5 percent for an average of 11.6 percent permanent partial impairment of the left upper extremity. The claimant declined this offer.
32. Judicial notice shall be taken of all the pleadings and forms filed with the Department of Labor and Industry.

CONCLUSIONS OF LAW:

1. In a workers' compensation action, the claimant has the burden of establishing all facts essential to the rights asserted, including the character and extent of the injury and disability. Goodwin v. Fairbanks, Morse and Co., 123 Vt. 151 (1962); Rothfarb v. Camp Awanee, Inc., 116 Vt. 172 (1950), overruled on other grounds; Shaw v. Dutton Berry Farm, Vt. Sup. Ct. No. 92-267 dated June 11, 1993.
2. The claimant must establish by sufficient, competent evidence the character and extent of the injury as well as the causal connection between the injury, the medical treatment for the injury, and the employment. Rothfarb v Camp Awanee, Inc., supra.
3. When the claimant's injury is an obscure one so that a layperson could have no well-grounded opinion as to its causation or duration, expert medical testimony is the sole means of laying the foundation for an award. Jackson v. True Temper Corporation, 151 Vt. 592, 596 (1989); Egbert v. The Book Press, 144 Vt. 367 (1984).
4. The facts proved must create in the mind of the trier of fact something more than a possibility, suspicion, or surmise that the incident complained of was the cause of the injury and the inference from the facts proven must be at least the more probable hypothesis. Jackson v. True Temper Corporation, supra; Burton v. Holman and Martin Lumber Co., 112 Vt. 17, 19 (1941).

The claimant makes claim for several permanent partial impairments for injuries allegedly arising out of and in the course of her employment with defendant Cepco. Each claim shall be addressed separately for convenience and clarity.

Right Wrist Impairment:

5. Although the claimant makes a claim for a 6 percent permanent partial impairment of the upper right extremity for the right carpal tunnel surgery performed in November 1989, it appears that claim has been compromised and settled.
6. On December 20, 1991, the Department of Labor and Industry approved a Form 22 Permanent Partial Settlement Agreement between the parties settling this claim for 5.5 percent of the right hand. Although a Form 22 does not foreclose a claim for additional permanency where appropriate, see Lajoie v. Lajoie, Opinion No. 13-84-WC, dated April 1, 1986, that situation is not present here. Therefore, because this claim

has been settled (and I shall assume that payment has been made) this claim is denied.

Left Wrist Impairment:

7. As the medical evidence demonstrates, the opinions on the degree of the claimant's permanent partial impairment of the left hand diverge dramatically. Dr. Baker places the impairment at 25 percent of the upper left extremity, while Dr. Wieneke and Dr. Upton placed it at 5 percent.
8. In this instance I find that Dr. Upton's rating is the more credible one for several reasons. First, Dr. Baker's permanency examination only consisted of tactile object identification from which he then concluded that the claimant's left hand possessed 65 to 70 percent of the sensory capacity of her right hand. He did not perform any pin prick or two-point discrimination or other tests to further evaluate the sensation in the claimant's left hand. Second, Dr. Baker does not appear to have accurately applied the AMA Guides for the Evaluation of Permanent Impairment, Third Edition, in rating the claimant's impairment. Third, Dr. Baker's permanency rating rests solely upon a sensory deficit and cramping. He found no loss of strength or loss of range of motion. Given these circumstances, I find that Dr. Baker's 25 percent rating is less credible than the 5 percent rating provided by Dr. Upton. Therefore, I find that the claimant suffered a 5 percent permanent partial impairment of her left hand which translates into entitlement to 8.75 weeks of benefits.

Left Elbow Pain:

9. Next, the parties dispute whether the claimant's left elbow condition arose out of and in the course of her employment. Based on the evidence presented, I find that it did.
10. At Cepco, the claimant rested her elbows on her knees while performing her work activities. In disputing the compensability of this claim, the defendant relies primarily upon the claimant's alleged failure to complain about left elbow pain for almost two years after she stopped working at Cepco.
11. Evidence suggests, however, that the claimant did complain about left elbow pain in December 1987, to a physical therapist at a Brattleboro Hospital.
12. In addition, these complaints were temporally linked to the development of claimant's carpal tunnel condition. Although this issue is not completely free from doubt as it does not

appear that the claimant's left elbow consistently bothered her, I find that she has demonstrated that her left elbow pain and the subsequent surgical repair arose out of and in the course of her employment.

13. Based on the evidence presented, I also find that the claimant suffered a 5 percent permanent partial impairment to the left upper extremity as a result of her left elbow injury and surgery which entitles her to 10.75 weeks of benefits.

Back Condition:

14. The claimant's claim for medical benefits or treatment for a back condition is denied, because she did not meet her burden of proof. Although Dr. Baker testified that he thought her back condition resulted from medical treatment for her left carpal tunnel release performed in April 1987, Dr. Woodcock the claimant's treating chiropractor for the back condition, was considerably less certain stating only that the back problems "could be associated with numerous operations or bilateral carpal tunnel complications."
15. For these reasons, I find that the claimant has not sustained her burden of proving that her back problem and treatment for them was causally connected to a work-related injury.

Vocational Rehabilitation:


16. Finally, although the issue of vocational rehabilitation had been discussed at the pretrial conference, it appears that the claimant has abandoned that claim in that she did not brief it. In any event, the record does not support any current claim for vocational rehabilitation benefits as a result of the claimant's left elbow condition.

Based on the foregoing conclusions of law, it is ordered that the claimant is entitled to the following benefits:

1. 8.75 weeks of benefits for 5 percent permanent partial impairment of the left hand;
2. 10.75 weeks of benefits for 5 percent permanent partial impairment of the upper left extremity for her left elbow condition; and

3. Since the claimant's recovery did not exceed the 11.6 percent permanent partial impairment the defendant offered to settle the case, she is not entitled to an award of attorney's fees.

DATED at Montpelier, Vermont this 19th day of November, 1993.


Barbara G. Ripley