

D. S. v. Standard Register Company

(February 4, 2004)

*STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY*

D. S.

Opinion No. 04-04WC

v.

*By: Margaret A. Mangan
Hearing Officer*

Standard Register Company

*For: Michael S. Bertrand
Commissioner*

State File No. L-04198

*Submitted on written record
Record Closed on October 21, 2003*

APPEARANCES:

*Scott R. Botzfield, Esq., for the Claimant
Jennifer K. Moore, Esq., for the Defendant*

ISSUES:

Is the claimant entitled to temporary total disability benefits from June 21, 1998 to April 29, 1999 pursuant to 21 V.S.A. § 642?

Is claimant entitled to medical and hospital benefits, in an amount to be determined pursuant to 21 V.S.A. § 640?

Is the claimant entitled to attorney fees, costs and interest on sums to be determined?

EXHIBITS:

*Medical Records
Deposition testimony of Dr. Andres Roomet
Affidavit of claimant Donna Sprague
Curriculum Vitae of Dr. Roomet*

FINDINGS OF FACT:

Claimant was an "employee" and Standard Register her "employer" within the meaning of the Vermont Workers' Compensation Act (Act) at all times relevant to this action.

The Travelers was the workers' compensation insurer for Standard Register.

Claimant began working at Standard Register in January of 1986 and worked there until August 14, 1997.

On August 14, 1997, claimant was working her regular shift. She sorted forms into packs of 500 and lifted them onto a machine. She reported shooting pains in both of her wrists and forearms and went to an emergency room where a physician noted that both Phalen's and Tinel's signs were positive bilaterally. She was told she could return to work if she wore splints.

Next, claimant saw her primary care physician, Dr. Bryant, who took her out of work. He also referred her to Dr. Andres Roomet who ordered and interpreted electrophysiologic testing. Dr. Roomet noted that the test was essentially normal, although it revealed high normal latency over the median nerve across the carpal tunnel.

In September of 1997, claimant saw Dr. Rosenberg, an orthopedist, with complaints of hand numbness, as well as neck and shoulder pain. Clinical tests for carpal tunnel syndrome were negative. Dr. Rosenberg concluded that claimant was capable of light duty work and recommended she seek treatment for depression.

On October 13, 1997, Claimant was released to light duty work with restrictions.

Dr. Gross, claimant's chiropractor, also confirmed that she was capable of light duty work. She was scheduled to return to Standard Register on October 20, 1997, but did not report for work that day. Ultimately, she was fired.

On November 5, 1997, Dr. Gross noted that claimant had severe neck pain with weakness and tingling in her hands. He concluded that she was not yet ready to return to work.

On November 19, 1997, Dr. George White evaluated the claimant, noting that she was quite depressed. He also noted that he could find no physiologic reason why she could not perform light duty work,

although she was adamant that she could not. He recommended a multidisciplinary approach to therapy.

Claimant has not worked since August 14, 1997.

Claimant reported to several physicians that she did not believe she could tolerate the symptoms work would cause, despite their opinions that she was capable of light work and the employer's willingness to provide it.

On November 24, 1997, this department approved the parties' agreement for temporary total disability benefits (Form 21) based on a diagnosis of bilateral carpal tunnel syndrome.

Dr. Roland Hazard evaluated the claimant on December 11, 1997 for complaints of diffuse neck and upper extremity complaints and low back pain. From the description claimant gave him, Dr. Hazard opined the she was unable to work.

Defendant paid the claimant temporary total disability benefits from August 14, 1997 until June 21, 1998, when benefits were terminated based on Dr. Jonathan Fenton's determination that claimant had reached medical end result.

On February 12, 1998, she had an MRI of the spine that revealed a pars defect, minimal disc degeneration and loss of the normal cervical curve. There was no evidence of disc herniation. A week later, Dr. Hazard described the complicated medical nature of this case with chronic pain, depression and other medical problems. He encouraged her to be active, but did not think she could work.

On June 2, 1998, Dr. Jonathan Fenton performed an examination of the claimant at the defendant's request. He diagnosed claimant with fibromyalgia, chronic pain and severe depression. Although he did not believe she had carpal tunnel syndrome, he opined that she had reached medical end result for it.

On June 30, 1998, Dr. Bryant certified to the Department of Employment and Training that claimant had carpal tunnel syndrome and that she was not to return to her previous job at Standard Register, but that she was medically released to perform light duty work.

In December of 1998, Dr. Roomet confirmed the diagnosis of carpal tunnel syndrome. He opined that claimant's complaints of numbness, a condition corrected with carpal tunnel surgery, make this a fairly straightforward case of carpal tunnel syndrome. As he explained, a "syndrome" is a collection of symptoms. It includes the claimant's history and physical examination. Although electro physiologic testing is helpful to making the diagnosis, a negative test does not rule out the diagnosis if other factors are present.

On April 2, 1999, Dr. Mogan surgically released the nerve from claimant's right carpal tunnel.

Claimant was released from postoperative care on April 29, 1999, with no resulting permanent impairment.

Travelers accepted the claim for carpal tunnel syndrome (CTS), but not for other problems claimant developed, including chronic neck pain, chronic back pain, non-specific upper extremity symptoms bilaterally, and major depressive disorder. The other problems are not a part of the present dispute. In March of 1998 defendant specifically denied as not compensable, the non-CTS conditions.

CONCLUSIONS OF LAW:

In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. Goodwin v. Fairbanks, 123 Vt. 161 (1963). The claimant must establish by sufficient credible evidence the character and extent of the injury and disability as well as the causal connection between the injury and the employment. Egbert v. Book Press, 144 Vt. 367 (1984).

There must be created in the mind of the trier of fact something more than a possibility, suspicion or surmise that the incidents complained of were the cause of the injury and the inference from the facts proved must be the more probable hypothesis. Burton v. Holden & Martin Lumber Co., 112 Vt. 17 (1941).

Defendant denies that claimant ever had work-related carpal tunnel syndrome, but the credible medical evidence proves otherwise. Although electro diagnostic tests were negative, clinical findings confirmed the near unanimous medical diagnosis of carpal tunnel syndrome, which I accept.

Less clear is claimant's entitlement to temporary total disability benefits after they were discontinued in June of 1998. "Under Vermont workers' compensation law, a claimant is entitled to temporary disability compensation upon reaching medical end result or successfully returning to work. See Orvis v. Hutchins, 123 Vt. 18, 24, 179 A.2d 470, 474 (1962) (temporary disability ends when maximum earning power has been restored or recovery process has ended)." Coburn v. Frank Dodge & Sons, 165 Vt. 529, 532 (1996). "End medical result" or "medical end result" means the point at which a person has reached a substantial plateau in the medical recovery process, such that significant further improvement is not expected, regardless of treatment. WC Rule 2.1200.

Once released to work, a Claimant is obligated to conduct a good faith job search within prescribed limitations. If those efforts prove unsuccessful, the right to TTD continues. However, if a properly notified claimant fails to conduct that good faith search, the carrier is not obligated to continue paying temporary benefits. WC Rule 18.1300.

Claimant argues that she remained disabled and entitled to TTD until after the carpal tunnel surgery. Indeed, she adamantly declared to all treating physicians that she could not work. Although they recorded her belief, they did not agree with it. In fact, her physicians told her that she had a light duty capacity, but she rejected their assessment. Claimant's fear that work would hurt her and her refusal to even try to work cannot be a basis for the continuation of TTD, when her physicians cleared her to work and the employer made light duty work available.

Although claimant had surgery later, the evidence supports the defense position that she could have returned to work on light duty work before hand. Although Dr. Fenton's medical end result determination cannot be accepted because it is based on a diagnosis that he rejects, the insurer was justified in terminating benefits based on the opinion expressed by Dr. Bryant, Dr. Rosenberg and Dr. White that she was capable of light duty work.

Later opinions from Dr. Hazard and Dr. Gross that claimant could not work are based on complaints unrelated to the carpal tunnel syndrome. Without the crucial element of causation between the work-related injury and the claimed period of disability, therefore, her claim for additional TTD fails, except for a one-month period, from the

date of her carpal tunnel surgery on April 2, 1999 until the April 29, 1999 medical end result determination.

Because the carpal tunnel syndrome is compensable, claimant is entitled to medical benefits associated with that condition.

ORDER:

Therefore, based on the foregoing findings of fact and conclusions of law,

Claimant is entitled to:

*Temporary total disability benefits from April 2, 1999 until April 29, 1999; and
Medical benefits for the care of her carpal tunnel syndrome.*

The claim for temporary benefits from June 1998 until April 2, 1999 is DENIED.

Dated at Montpelier, Vermont this 4th day of February 2004.

*Michael S. Bertrand
Commissioner*

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.