

H. K. v. Woodridge Nursing Home

(January 16, 2007)

**STATE OF VERMONT
DEPARTMENT OF LABOR**

H. K.

Opinion No. 01-07WC

v.

By: Margaret A. Mangan
Hearing Officer

Woodridge Nursing Home

For: Patricia Moulton Powden
Commissioner

State File No. U-50905

Hearing held in Montpelier on October 31, 2006

Record closed on November 20, 2006

APPEARANCES:

Heidi S. Groff, Esq., for the Claimant

Keith J. Kasper, Esq., for the Defendant

ISSUES:

1. What is Claimant's current diagnosis? Is it work related? Are the alleged right upper extremity complaints and bilateral lower extremity complaints related to her work related injury?
2. Is Claimant entitled to any permanent partial disability benefits for her work-related right wrist fracture and carpal tunnel syndrome? If so, what is the rating?

EXHIBITS:

Joint Exhibit I:

Medical Records

Joint Exhibit II:

Dr. Mathew's deposition transcript

Claimant's Exhibit 1:

Dr. Matthew's Curriculum Vitae

Defendant's Exhibit A:

Dr. Gennaro's Curriculum Vitae

Defendant's Exhibit B:

Dr. Pulde's Curriculum Vitae

STIPULATION

1. On November 11, 2003, Claimant fell and sustained a right wrist fracture.
2. On November 11, 2003 Woodridge Nursing Home was covered by a workers' compensation insurance policy issued by Liberty Mutual Insurance Company.
3. Liberty Mutual accepted the claim for a right wrist fracture and paid for medical bills associated with that claim.
4. Claimant also had preexisting bilateral carpal tunnel syndrome which was aggravated on the right side. Claimant underwent right carpal tunnel surgery in June 2004.
5. On November 11, 2003, Claimant's average weekly wage was \$131.81, resulting in an initial compensation rate of \$121.73.

FINDINGS OF FACT:

1. Helen Kennett became Helen Garneau in July 2006 when her divorce became final.
2. Claimant began working as a Food Service Worker at the Woodridge Nursing Home in June 2002. She worked forty hours every two weeks, washing pots and pans, doing assembly line work, and delivering food carts.
3. Claimant has been receiving social security benefits since 1996 for unrelated reasons, but worked despite the disability.
4. Claimant has diabetes that is treated with diet and medication, but not insulin.
5. John Matthew, M.D. has treated Claimant for twenty-five years.
6. Nerve conduction studies confirm, and all physicians involved in this case agree, that Claimant has diabetic neuropathy, a condition that affects the nerves in the extremities in many who have diabetes. Symptoms typically are lack of sensation or pain. Christopher Merriam, M.D., an orthopedist, documented the condition in October 2000. Dr. Matthew has treated Claimant for neuropathy since 2003.
7. In July of 2003, Christopher Bean, M.D., an orthopedic surgeon with expertise in hands, noted that Claimant had pain in her left hand when holding things.
8. In October and November 2003, Dr. Matthew noted that Claimant had low back and leg pain. An epidural injection to treat the pain was planned. At that time, Claimant was out of work for several weeks due to pain. Also in the fall of 2003, a physical therapist note indicated that Claimant had increased pain and decreased strength in her right foot.

9. On November 11, 2003, Claimant was working when she tripped and hit her head and right wrist, fracturing the wrist. After a period out of work for treatment, Claimant returned to full time work mid May 2004.
10. In January 2004, Stephanie Landvater, M.D., the orthopedic surgeon who treated Claimant's wrist fracture, first noted increased sensitivities suggesting an RSD (Regional Sympathetic Dystrophy) diagnosis.
11. Dr. Matthew diagnosed Claimant with diabetic neuropathy and with RSD; a chronic pain condition that he opined was caused by her work related injury. RSD is also called Complex Regional Pain Syndrome (CRPS).
12. RSD is a pain condition that comes on suddenly after an acute injury. In this case, the pain followed the wrist fracture and carpal tunnel surgery, both work related. Throbbing pain is characteristic as is exquisite sensitivity to touch, symptoms Dr. Matthew noted with Claimant.
13. As a consequence of that injury, she developed carpal tunnel syndrome in her right upper extremity that was surgically treated. On June 11, 2004, Dr. Landvater performed carpal tunnel surgery.
14. Sometime after the surgery, Claimant developed pain in her left hand and her feet.
15. Claimant's employment with Defendant ended in October 2005 for reasons unrelated to this action.
16. Claimant now works fulltime at Project Independence, helping participants with meals and hygiene.
17. In support of the RSD diagnosis, Dr. Matthew noted that Claimant presents with allodynia, an exquisite sensitivity to light touch. In August of 2005, he specifically noted that the top of her foot prickled terribly; toes and the top of her foot were sensitive to touch; toes and fingers were shiny and swollen. Dr. Matthew opined that neither carpal tunnel syndrome nor diabetic neuropathy could explain the findings in her hands.
18. In response to the fact that Claimant returned to work after the development of RSD, Dr. Matthew noted that one theory for the treatment of RSD is to have the patient work through the pain.
19. At various times in the treatment process since her work related injury, Dr. Gennaro, Dr. Bean and Dr. Matthew have all suggested that RSD might be a diagnosis appropriate for this patient.
20. Victor Gennaro, D.O. is an orthopedic surgeon who based his initial impression of RSD on information available to him at the time of his September 15, 2004 examination: asymmetry between her hands; swelling in her right hand, fingers and wrist; vasomotor

changes; skin color changes; hypersensitivity; restricted passive range of motion; and smooth, non-elastic skin texture.

21. Two months later, on November 18, 2004, Dr. Gennaro modified his original opinion regarding RSD. He determined that Claimant did not meet all of the criteria necessary for the RSD diagnosis, that he was unsure if she had RSD or vasomotor instability.
22. On January 19, 2006, Dr. Gennaro issued a third report after he had reviewed recent testing results and many medical records unavailable to him at the time of the earlier reports. Based on results of a bone scan and information from a pain management specialist, he determined that Claimant did not have RSD. He attributed her symptoms to diabetic neuropathy, and Raynaud's syndrome.
23. George White, M.D., an occupational medicine expert, opined that Claimant's preexisting right-sided carpal tunnel syndrome was aggravated by her work related wrist fracture. He assigned an 11% permanent partial impairment for the work related injury. However, Dr. White did not assign a permanency rating for the RSD because he did not find that she met the criteria for that diagnosis under the AMA Guides to the Evaluation of Permanent Impairment at the time of his evaluation in August 2006.
24. Milo Pulde, M.D. is board certified in internal medicine, with expertise in neurological and pain disorders. He reviewed Claimant's medical records and examined her on February 13, 2006. Based on the review and examination, Dr. Pulde opined that it is possible, though not probable, that Claimant has RSD. He determined that Claimant has no permanent partial impairment attributable to the work related injury.
25. Dr. Matthew noted that in more than half the patients with RSD, pain crosses the midline so that one has pain in the previously unaffected extremity. He explained that RSD is not a static state, that symptoms can ebb and flow. It is possible that not all examiners detected the signs he assessed because the examinations were conducted at different times. Further, RSD has degrees of severity and is best treated in the early stages before the signs the defense experts believe are essential for a diagnosis, appear.
26. Diabetic neuropathy cannot explain the symptoms Claimant has in her extremities. Diabetic neuropathy causes pain and loss of other sensation in an extremity, not the hypersensitivity to light touch seen with RSD.
27. Claimant's counsel has a one-third contingency fee agreement with Claimant and an approved attorney lien. Counsel spent \$1,625.70 pursuing this claim.

CONCLUSIONS OF LAW:

1. In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. *Goodwin v. Fairbanks*, 123 Vt. 161 (1962). She 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).

2. 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 Holden & Martin Lumber Co.*, 112 Vt. 17 1941. Where the causal connection between an accident and an injury is obscure, and a layperson would have no well-grounded opinion as to causation, expert medical testimony is necessary. *J.G. v. Eden Park Nursing Home*, Opinion No. 52-05WC (2005) (citing *Lapan v. Berno's Inc.*, 137 Vt. 393 (1979)).
3. When qualified medical experts disagree, as in this case, the Department has traditionally examined the following criteria in determining which opinions to accept: 1) the length of time the physician has provided care to the claimant; 2) the physician's qualifications, including the degree of professional training and experience; 3) the objective support for the opinion; and 4) the comprehensiveness of the respective examinations, including whether the expert had all the relevant records. *J.C. v. Richburg Builders* Opinion No. 37-06WC (2006). (citing *Miller v. Cornwall Orchards*, Opinion No. 20-97WC (1997); *Gardner v. Grand Union*, Opinion No. 24-97WC (1997)).
4. Dr. Matthew has the advantage as the treating physician in this case, having treated Claimant for decades. He was familiar with her reaction to pain, her chronic conditions and her responses to treatment. Although clearly an advocate for the Claimant, there is no suggestion that his objectivity was in any way compromised. All experts are well qualified, although none has a specialty in the diagnosis and treatment of RSD. All conducted thorough examinations and reviewed relevant medical records.
5. All suggested at one time or another that Claimant had RSD. They were probably all correct. On balance I accept the opinion of Dr. Matthew as the most persuasive. He convinced me that RSD is not a static state, that symptoms can ebb and flow. It is likely that Claimant was not highly symptomatic at the time Dr. Pulde and others examined her. Dr. Matthew also convincingly explained that RSD has degrees of severity and is best treated in the early stages before the signs the defense experts believe are essential for a diagnosis, appear. Finally, I accept Dr. Matthew opinion that diabetic neuropathy cannot explain the symptoms he attributes to RSD. Diabetic neuropathy causes pain and loss of other sensation in an extremity, not the hypersensitivity seen with RSD.

6. Accordingly, Defendant is responsible not only for the fractured wrist and carpal tunnel syndrome on the right, but also for medical treatment for Claimant's RSD pursuant to 21 V.S.A. § 640(a).
7. If the permanent partial disability benefits have not yet been paid, Defendant is responsible for payment based on the 11% whole person rating assessed by Dr. White.
8. Pursuant to 21 V.S.A. § 678(a) and WC Rule 10. Claimant is also owed attorney fees based on 20% of the total award, not to exceed \$9,000, and the necessary costs of \$1,625.70.
9. Interest must be paid from the date each of the ordered benefits would have been paid had the claim been accepted, until paid. 21 V.S.A. § 664.

ORDER:

Therefore, based on the foregoing findings of fact and conclusions of law, Defendant must pay the benefits specified above for:

1. Medical Benefits;
2. Permanent Partial disability benefits
3. Interest;
4. Attorney fees and costs.

Dated at Montpelier, Vermont this 16th day of January 2007.

Patricia Moulton Powden
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.