STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY

Cynthia Galbicsek *Opinion No. 30-04WC*

By: Margaret A. Mangan
v. *Hearing Officer*

For: Michael S. Bertrand
Experian Information Solutions *Commissioner*

State File Nos. S-07728; P-07008

Hearing Held in Rutland on February 17, 2004 and by telephone on February 20, 2004
Record Closed on March 22, 2004

APPEARANCES:

Cynthia Galbicsek, Pro se
John W. Valente, Esq., for the defendant Experian Information Solutions

ISSUES:

1. *Did the claimant's carpel tunnel syndrome arise out of and in the course of employment?*

2. *Is the claimant's continued use of narcotics reasonable and necessary medical treatment for her work-related low back injury?*

EXHIBITS:

Joint I: *Medical Records*

Claimant's 1: *Supplemental Medical Records and Statements*

Defendant's A: *Report of Independent Medical Examination of Dr. Kenosh*
Defendant's B: *Deposition of Michael Kenosh, M.D.*
Defendant's C: *Deposition on Leon Ensalada, M.D.*

FINDINGS OF FACT:

1. *Cynthia Galbicsek (claimant) was at all relevant times an employee of defendant, Experian Information Solutions.*

2. *The claimant is a machine operator at a letter shop. The machine she works on fills envelopes with materials that are to be mailed. Her jobs requires lifting and loading boxes full of materials into the machine hoppers, loading the machine, troubleshooting the machine, maintaining a clean work area, and preparing quality reports.*

3. *Claimant's job requires her to stand for long periods, reach, stoop, and bend. She is constantly changing position at work and uses her arms and hands in a variety of ways. She often holds stacks of paper material in her hands, fans the material, inserts the materials into hoppers, and collects and stacks filled envelopes in trays.*

Carpal Tunnel Syndrome

4. *Claimant has carpal tunnel syndrome that she alleges is work related.*

5. *Claimant has maintained a hobby of cross-stitching and crocheting since she was 10 years old.*

6. *Mark Bucksbaum. M.D., an expert originally hired by the defense in this case who later became claimant's treating physician is board certified in Physical Medicine and Rehabilitation, Pain Management and as an Independent Medical Examiner He based his opinion that the CTS is work related on his experience and one study that he recalled stirred controversy. He provided little about what specific duties performed by the claimant would have caused her carpal tunnel syndrome.*

7. *Leon Ensalda, M.D., an expert hired by the defendant, with board certifications in Anesthesiology, Pain Management, Forensic Medicine and as an Independent Medical Examiner studied the epidemiology of carpal tunnel for his master's degree and wrote a thesis on the subject. He concluded, based on his understanding of claimant's work duties, that the claimant's carpal tunnel is not causally related to work.*

8. *Michael Kenosh, M.D. is board certified in Physical Medicine and Rehabilitation and in disability impairment ratings. He is the Medical Director of the Occupational Health Program at Rutland Regional Medical Center and an expert hired by the defense. Dr. Kenosh visited the Experian plant, performed a physical examination of the claimant, reviewed scientific literature, and recently attended an annual meeting of the American Academy of Disability Evaluating Physicians that had several presentations on carpal tunnel. He cited several recent studies, including one by the American Society of Surgery of the Hand*

and a 2002 study in the Journal of Hand Surgery, that helped him draw his conclusion that the claimant's carpal tunnel is not work related.

Back Pain

9. *The claimant suffered a low back injury on September 23, 1999 while stooping to pick up a box of material. She sought treatment at the Rutland Regional Medical Center (RRMC). She was diagnosed with low back pain and sacroiliac dysfunction. Degenerative changes were revealed on MRI.*

10. *Claimant has smoked for 31 years. Claimant has smoked between two and five packs of cigarettes per day. Claimant does occasionally drink alcohol and has used marijuana.*

11. *Since the injury, claimant has been treated for low back pain. While the reasonableness of the current condition is an issue, causation is not.*

12. *Dr. Bucksbaum was an independent medical examiner hired by the defendant following the claimant's injury to her back. The claimant then turned to Dr. Bucksbaum as a treating physician to help deal with her back pain.*

13. *Dr. Bucksbaum has worked closely with the claimant in managing her pain, despite a few setbacks. The treatment has led to successful pain management with a narcotic and a successful return to work. The treatment includes weekly to monthly visits with him, acupuncture, ultrasound, myofascial release, home exercise, pain medication, and physical therapy with Patricia Nowak. The claimant's pain level has fluctuated throughout her treatment. The Department accepts the opinion of Dr. Bucksbaum that the claimant has become addicted to her pain medication and that other reasonable treatments were unsuccessful.*

14. *Dr. Ensalda opined that the continuing practice of Dr. Bucksbaum of prescribing a narcotic was not reasonable or necessary. This is because, in his opinion, although the claimant presented symptoms, no objective findings were found to explain her symptoms and the claimant's history details substance abuse problems.*

15. *Dr. Kenosh, another expert whose opinion defendant offered, explained that, in his personal practice, he would not utilize narcotics to treat the claimant's pain. Dr. Kenosh did state, however, that,*

although he would not personally utilize chronic narcotics, he would not necessarily say that they are not reasonable and necessary treatment. In fact he specially disagreed with Dr. Ensalada's opinion on this issue, stating that although controversial, "chronic narcotic use for non-malignant pain is practiced fairly regularly in outpatient pain management programs." Defendant's Exhibit A at 8.

16. *Dr. Bucksbaum was aware of the claimant's occasional use of alcohol and recreational drugs and counseled claimant against any further use. The claimant signed a pain management agreement with Dr. Bucksbaum, the violation of which will lead to removal from the program.*

17. *The claimant was able to return to work in April of 2000 despite the addiction. We adopt the opinion of Dr. Bucksbaum that removal of claimant from pain management program would require her to enroll in a controlled inpatient detoxification program, leave her employment during her stay in the program, likely become depressed, lose several months of work time, and be faced with the new dilemma of how to control her pain.*

CONCLUSIONS OF LAW:

1. *In worker's 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. The book Press, 144 Vt. 367 (1984).*

2. *In considering conflicting expert opinions, we weigh the length of time physician has provided care to the claimant, the physician's qualifications, the objective support for the opinion, and the comprehensiveness of examinations. Miller v. Cornwall Orchards, Op. No. 27-97 WC (1997).*

3. *The purpose of the Workers Compensation Act is to provide employees an expeditious remedy that is independent of proof of fault and provide employers a limited and determinate liability. Kittell v. Vermont Weatherboard, Inc. 138 Vt. 439 (1980) (emphasis added). When a 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. Lapan v. Berno's, Inc., 137 Vt. 393 (1979). There must be created in the mind of a 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).*

4. *This Department weighs several factors when evaluating and choosing between conflicting medical opinions. These factors include (1) the nature of treatment and the length of time there has been a patient provider relationship; (2) whether accident, medical, and treatment records were made available to and considered by the examining physician; (3) whether the report or evaluation at issue is clear and thorough and included objective support for the opinions expressed; (4) the comprehensiveness of examination, and; (5) the qualifications of the experts, including professional training and experience. Miller v. Cornwall Orchard, Op. No. 2-97WC (1997).*

5. *Here, the Department is asked to rule on two issues. First, did claimant's work at Experian cause her carpal tunnel syndrome? Second, is the pain management treatment Dr. Bucksbaum prescribed reasonable?*

Carpal Tunnel Syndrome

6. *On the first question, whether claimant's carpal tunnel syndrome was caused by work, the treating physician has no advantage over the defense expert. In this case, all are well qualified by education and experience.*

7. *It is well established that when a 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. Lapan v. Berno's, Inc., 137 Vt. 393 (1979). Both parties have presented that evidence.

8. *Dr. Kenosh visited the Experian plant, performed a physical examination of the claimant, reviewed scientific literature, and recently attended an annual meeting of the American Academy of Disability Evaluating Physicians that had several presentations on carpal tunnel. He cited several recent studies, including one by the American Society of Surgery of the Hand and a 2002 study in the Journal of Hand Surgery, that helped him draw his conclusion that the claimant's carpal tunnel is not work related.*

9. *Dr. Ensalada also came to the conclusion that the claimant's carpal tunnel is not causally related to work. He studied the epidemiology of carpal tunnel for his master's degree and wrote a thesis on carpal tunnel.*

10. *Dr. Bucksbaum, on the other hand, largely based his testimony on his experience and one study that he recalled stirred a lot of controversy. He provided little about what specific duties performed by the claimant would have caused her carpal tunnel syndrome.*

11. *Weighing the factors laid out in Miller v. Cornwall Orchard, Op. No. 2-97WC (1997), the Department finds that the qualifications, testimony, and training of Drs. Kenosh and Ensalada with respect to carpal tunnel syndrome are impossible to ignore. Their training, experience, and support materials make them more persuasive on this point.*

12. *Furthermore, the claimant was unable to convince us through a showing of evidence or testimony that her work required her to perform the ergonomic stressors typically linked to carpal tunnel syndrome as explained by Dr. Kenosh and Dr. Ensalada. Because the claimant has not met her burden of proof, the Department is unable to find that claimant's carpal tunnel syndrome is causally related to work.*

<u>Pain Management</u>

13. *Dr. Bucksbaum, the claimant's treating physician, has worked closely with the claimant, carefully monitoring the medications and dosages prescribed, has a good sense of the claimant's history, and has years of training in rehabilitation and pain management. He is also an IME. In fact, the defendant sent the claimant to him for an evaluation. Based on his knowledge of the patient and her history, he*

believes the pain management therapy he is providing the claimant is reasonable. Through this treatment, he has been able to get the claimant back to work.

14. *The defendant argues that such treatment is not reasonable because of the claimant's history.*

15. *It is the Department's understanding that a physician generally employs any agency, which, by way of training and experience, the physician finds to be useful and good in treating patients. A treating physician, practicing within the field of expertise, usually uses common sense, science, knowledge of a patient's medical history, something found useful, and a patient's reaction to treatment in prescribing a course of action to comfort an afflicted person. See Oliver Wendell Holmes, Pages from an Old Volume of Life 234-237 (Riverside Press 1890). When a treating physician testifies with objectivity about the reasonableness of care, with complete knowledge of all pertinent medical records and circumstances surrounding the case, absent bias, this Department gives the opinion of that physician great weight.*

16. Part of the reason such weight is given to the treating physician in this case is because underlying the workers compensation system is the desire to get injured employees back to work as quickly as possible. Questioning the reasonableness of treatment that accomplishes this goal undermines the purpose of the system and makes the process much slower. For the most part, when an ongoing treatment is successful in getting an injured employee back to work, this department will give little credence to testimony that challenges the reasonableness of that treatment. This is especially true when an opposing physician who has not treated and had extensive intimate contact with an injured claimant over a substantial period of time offers the testimony.

17. In this case, Dr. Bucksbaum practices within his field of expertise, uses common sense and science, has a thorough knowledge of the claimant's medical history, has recommended a medication he finds to be useful to treat the claimant's pain, and understands the claimant's reaction to other treatments. He is aware that the claimant has stumbled at times by using alcohol and other drugs. He is also aware that the claimant is addicted to her pain medication. To ensure compliance to the pain management agreement the claimant signed, he has performed periodic testing to check drug levels in the claimant's system. Despite the hiccups along the way, he has successfully aided the claimant to get back to work. Dr. Bucksbaum testified that, since the initial shortcomings, the claimant has been "solid" in this current treatment plan. We agree. His actions do not appear in any way to be unreasonable.

18. That the two defense experts would treat the claimant differently is not dispositive. Under 21 V.S.A. § 640(a), the relevant inquiry is whether the treatment is reasonable, not which treatment is more reasonable. This Department has held in the past that an academic disagreement between experts will not defeat a claim. Lappas v. Stratton Mountain, Op. No. 55-03WC (2003). It is not necessary to decide between two reasonable treatment alternatives. Dr. Bucksbaum has provided a logical, objective, well-founded, reasonable opinion about how he wants to treat his patient. We need to go no further. The Department finds the claimant's continued use of narcotics is a reasonable medical treatment for this claimant who is able to continue working.

19. However, in light of the claimant's history, this department will not sanction an indefinite continued use of narcotics. Therefore, we will take the unusual step of reevaluating this case in two years. It is

hoped that within that time, claimant's pain will have subsided to the point where narcotics are no longer required or that she and her physician will have developed a withdrawal program compatible with work.

ORDER:

Therefore, based on the foregoing Findings of Fact and Conclusions of Law:

Defendant's request to discontinue compensation for Claimant's carpal tunnel system is GRANTED.

Defendant's request to discontinue treatment relating to Claimant's back injury is DENIED, although this issue will be reevaluated in two years.

Dated at Montpelier, Vermont this 1st day of September 2004.

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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.