STATE OF VERMONT
DEPARTMENT OF LABOR

Darlene Chartrand

v.

General Electric Aviation

Opinion No. 15-16WC

By: George K. Belcher, Esq.
Administrative Law Judge

For: Anne M. Noonan
Commissioner

State File No. T-18120

RULING ON CLAIMANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT

APPEARANCES:

Erin H. Gallivan, Esq. for Claimant
Erin J. Gilmore, Esq. for Defendant

ISSUE PRESENTED:

1. Is Claimant's 2014 carpal tunnel syndrome condition compensable as a matter of law?

EXHIBITS:

Claimant's Statement of Undisputed Facts
Claimant's Exhibit A: Defendant's Pre-trial Disclosures
Claimant's Exhibit B: Claimant's First Report of Injury, 4/24/14
Claimant's Exhibit C: Vermont Orthopaedic Clinic records, 2003
Claimant's Exhibit D: Dr. Stein office note, 6/30/14, amended 7/30/14
Claimant's Exhibit E: Dr. Timura deposition, November 24, 2015

Defendant's Statement of Disputed Facts, 1/28/16
Defendant's Exhibit 1: GE medical note, 5/6/14
Defendant's Exhibit 2: GE medical note, 7/11/07
Defendant's Exhibit 3: Dr. Timura deposition, November 24, 2015
Defendant's Exhibit 4: Dr. Stein office note, 6/30/14

FINDINGS OF FACT:

The following facts are undisputed:

1. Claimant has filed a Motion for Partial Summary Judgment seeking a determination that her right upper extremity condition is compensable as the natural progression of a compensable injury. Defendant filed an Opposition to the Motion with a Statement of Disputed Facts and Exhibits. Claimant filed a response.

2. At all times relevant to these proceedings Claimant was an employee and Defendant was her employer as those terms are defined in Vermont's Workers' Compensation Act.

3. In 1990 Claimant was assessed with mild carpal tunnel syndrome of the right hand. Defendant accepted this injury as work-related and compensable. *Claimant's Exhibit A.*

4. Again in 2003, Claimant reported problems with her right hand and arm. These injuries as well were causally related to her work for Defendant. *Claimant's Exhibit A.*

5. On April 24, 2014 Claimant reported right arm pain and numbness. At the time she was working in Defendant's pre-ship area, inspecting and packaging blades. By this time, she had worked in pre-ship for four to five years. In her injury report, she related the problem to prior incidents in 1990 and 2003. *Claimant's Exhibit B.*

6. Defendant denied Claimant's claim for medical benefits by way of a Denial of Workers' Compensation Benefits (Form 2) filed on July 15, 2015. As grounds, the form stated, "Treatment Is Not Reasonable, Necessary, or Related to Injury: 5/6/14 Evaluation for [sic] Dr. Timura notes that diagnosis is not causally related to her work at GE." *Form 2 Denial*.

7. Dr. Stein treated Claimant for her right upper extremity problem in both 2003 and 2014. On July 30, 2014 she noted, "The carpal tunnel which has progressed over years of highly repetitive work including benching and now inspection of blades is in my opinion work related." *Claimant's Exhibit D*.

8. Defendant has identified only one defense witness, Dr. Timura, who would testify in accordance with his deposition testimony. *Claimant's Exhibit A*.

9. When Dr. Timura examined the Claimant on May 6, 2014, he reported the following assessment, *Defendant's Exhibit 1*:

> Assessment: Carpal tunnel syndrome on the right. Within a reasonable degree of medical certainty, her recent diagnosis is not causally related to her work at GE. She has been working pre-ship inspect for about four to five [sic] and therefore there is no temporal relationship to her alleged current condition being related back to 1990 or 2003. In addition, her job tasks do not require any forceful pinching or gripping nor awkward wrist position.

10. This opinion formed the basis for Defendant's claim denial.

11. In his deposition, Dr. Timura was asked various questions about the relationship between Claimant's current condition and her prior injuries in 1990 and 2003, *Claimant's Exhibit E at p. 84, lines 1-9*:

> Q. (Ms. Gallivan) Okay is her condition now related back to her condition back in 1990 and 2003?
> A. (Dr. Timura) In what sense?
> Q. The medical sense.
> A. Well, yeah, it's on the right side and it's gotten worse.
> Q. Is it the natural progression of her condition?
> A. Yes.

12. And later, *Claimant's Exhibit E at p. 85, lines 2-5*:

> Q. Okay. And I assume that means non-work activities didn't contribute to her condition; is that correct?
> A. Correct.

13. Dr. Timura's deposition testimony made clear that his opinion concerning the absence of a causal relationship between Claimant's current carpal tunnel syndrome symptoms and her work applied exclusively to her recent assignment in "pre-ship," *Claimant's Exhibit E at p. 107, lines 19-25 and p. 108, lines 1-13*:

> Q. (Ms. Gallivan) Does it really matter whether her symptoms ever really resolved or not to your opinion in this case?
> A. (Dr. Timura) Not in respect of whether or not it's causally related to work it doesn't matter.
> Q. So whether her symptoms resolved or not makes no difference to your opinion about whether her current condition is work related?
> A. In this scenario – I'm looking at whether or not her diagnosis of carpal tunnel syndrome – which is correct by the way – whether or not it was causally related to her work in pre-ship and pre-ship inspect. And I do not believe it was.

Q. Right. But it's your testimony that it's not relevant to you whether her symptoms have resolved prior to that or not. It's not relevant to your opinion in this case. I'm just trying to get the record straight.
A. Correct.

14. Dr. Stein's causation opinion specifically stated that "[t]he carpal tunnel syndrome **which has progressed** over years of highly repetitive work including benching and now inspection of blades is in my opinion work related (emphasis added)." Dr. Timura's testimony is more supportive of than contradictory to Dr. Stein's progression opinion.

DISCUSSION:

1. In order to prevail on a motion for summary judgment, the moving party must show that there exist no genuine issues of material fact, such that it is entitled to a judgment in its favor as a matter of law. *Samplid Enterprises, Inc. v. First Vermont Bank*, 165 Vt. 22, 25 (1996). In ruling on such a motion, the non-moving party is entitled to the benefit of all reasonable doubts and inferences. *State v. Delaney*, 157 Vt. 247, 2523 (1991). Summary judgment is appropriate only when the facts in question are clear, undisputed, or unrefuted. *State v. Heritage Realty of Vermont*, 137 Vt. 425 (1979). It is unwarranted where the evidence is subject to conflicting interpretations, regardless of comparative plausibility of facts offered by either party or the likelihood that one party or the other might prevail at trial. *Provost v. Fletcher Allen Health Care, Inc*. 2005 VT 115.

2. The Workers' Compensation process is amenable to expedited process where appropriate. "All process and procedure under the provisions of this chapter shall be as summary and simple as reasonably may be." 21 VSA Sec. 602.

3. Summary judgment is appropriate where, after adequate time for discovery, a party fails to make a sufficient showing to establish the existence of an element essential to its case. *Poplaski v. Lamphere,* 152 Vt. 251, 254-255 (1989).

4. The sole purpose of summary judgment review is to determine if a genuine issue of material fact exists. If such an issue does exist, it cannot be adjudicated in the summary judgment context, no matter how unlikely it seems that the party opposing the motion will prevail at trial. *Fonda v. Fay*, 131 Vt. 421 (1973).

5. When the nonmoving party will bear the burden of proof at hearing, that party must set forth "specific facts showing that there is a genuine issue for trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986); V.R.C.P. 56(e).

6. Once an injury is shown to have arisen out of and in the course of employment, every natural consequence that flows from it likewise is deemed to have arisen out of the employment. 1 Lex K. Larson, *Larson's Workers' Compensation* §10 (Matthew Bender, Rev. Ed.) at p. 10-1; *Brower v. Mount Mansfield, Opinion* No. 03-12WC (January 18, 2012). An exception to the general rule exists as to consequences that result from an independent intervening non-industrial cause attributable to the claimant's own intentional conduct. *Lushima v. Cathedral Square Corp.,* Opinion No. 38-09WC (September 29, 2009), citing *Larson's Workers' Compensation, supra.* Such an event may be sufficient to break the chain of causation back to the primary injury and thereby may relieve the employer of further workers' compensation liability.

7. Dr. Stein determined that Claimant's injury is progressive and work related. Dr. Timura agreed that the injury exists, and has naturally progressed since the condition first manifested as work-related in 1990 and then again in 2003. Dr. Timura also acknowledged that no non-work-related incident has contributed in any way to Claimant's current condition. Under these facts, one must reasonably ask whether there are specific facts which show a genuine issue for trial.

8. In argument, Defendant points to a statement made by a Dr. Ryder in 2007 to the effect that Claimant had been fairly symptom free since 2003. Defendant argues that this medical record shows that Claimant made inconsistent statements. Dr. Timura had this report prior to rendering his opinions in deposition, however, and in fact had included reference to Dr. Ryder's record in his initial report. Defendant's claim of inconsistency is unpersuasive, therefore.

9. Defendant next argues that Dr. Timura denied a causal relationship between Claimant's carpal tunnel syndrome and "her work at GE" based upon the lack of a temporal relationship. Considering his deposition testimony as a whole, however, I conclude that Dr. Timura's reference to Claimant's "work at GE" was limited solely to her work during the past four or five years in pre-shipping, and not to her time at GE in 1990 and 2003.

10. Next, Defendant argues that the *Brower* case is distinguishable because it was not a summary judgment proceeding. The principle of law stated in that case does not lose validity simply because it was not applied in summary judgment, however.

11. Next, Defendant argues that carpal tunnel syndrome is "multi-factorial" in nature. This fact is undisputed, as is the fact that many non-work-related risk factors can contribute to the development and progression of carpal tunnel syndrome in a particular person. Defendant is correct that the nature of carpal tunnel syndrome itself weighs heavily in favor of denying Claimant's Motion for Partial Summary Judgment, as expert medical testimony will be required to determine whether in this case the condition is causally linked to her work for Defendant or to other factors that are personal to her and therefore not work-related. *See Defendant's Opposition to Motion at pp. 4-5.*

12. This point would be persuasive if not for the fact that Defendant's own expert discounted any non-work-related contributions, and instead established a direct causal link back to her earlier work-related injury claims against it. As noted above, I must now add his opinion to that of Claimant's expert, Dr. Stein. Under the unusual facts of this case, the medical experts both support compensability, therefore.

13. Finally, Defendant challenges Dr. Stein's conclusion because she did not state the basis for her opinion in her July 30, 2014 chart note. This argument as well might be persuasive if there was a "clear conflict in medical expert opinion in this matter," as Defendant argues, *id. at p. 6*. However, Dr. Timura did not directly challenge Dr. Stein's conclusions in his deposition. To the extent that both medical experts determined that the injury was a progression from Claimant's prior injuries in 1990 and 2003, the basis for their *consistent* opinions is not particularly important, therefore.

14. Numerous decisions support the proposition that summary judgment is inappropriate when there are factual issues that require evidentiary hearing, cross-examination and full development at trial. That principle is often cited and is accepted here as "black letter law." At the same time, it was Dr. Timura's initial report and opinion that formed the basis of the controversy in this case. When subsequently his deposition testimony clarified that he too believed, as Dr. Stein did, that Claimant's current condition represents the natural progression of her compensable 1990 and 2003 work-related injuries, without any contribution from non-work-related causes or events, Defendant's only issue in this case evaporated.

15. As Claimant has prevailed in her claim for benefits, she is entitled to an award of attorney fees in accordance with 21 V.S.A. §678. Claimant shall have 30 days from the date of this Ruling within which to submit her itemized claim.

ORDER:

Claimant's Motion for Partial Summary Judgment is hereby **GRANTED**. Defendant is hereby **ORDERED** to pay:

1. All workers' compensation benefits to which Claimant proves her entitlement as causally related to her compensable right upper extremity condition, with interest as provided in 21 V.S.A. §664; and

2. Attorney fees in amounts to be determined, in accordance with 21 V.S.A. §678.

DATED at Montpelier, Vermont this ____ day of August 2016.

_____
Anne M. Noonan
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 VSA Sec. 670, 672.