Jeanann Haskin v. Green Mountain Coffee Roasters (March 18, 2013)

STATE OF VERMONT
DEPARTMENT OF LABOR

Jeanann Haskin

v.

Green Mountain Coffee Roasters

Opinion No. 10-13WC

By: Phyllis Phillips, Esq.
Hearing Officer

For: Anne M. Noonan
Commissioner

State File No. DD-57471

OPINION AND ORDER

Hearing held in Montpelier on December 7, 2012
Record closed on January 14, 2013

APPEARANCES:

Christopher McVeigh, Esq., for Claimant
Jeffrey Dickson, Esq., for Defendant

ISSUES PRESENTED:

1. Did Claimant's work for Defendant cause and/or aggravate her bilateral carpal tunnel syndrome?

2. If yes, to what workers' compensation benefits is Claimant entitled as a consequence of that injury?

EXHIBITS:

Joint Exhibit I: Medical records

CLAIM:

All workers' compensation benefits to which Claimant proves her entitlement as a consequence of her alleged work-related injury
Interest, costs and attorney fees pursuant to 21 V.S.A. §§664 and 678

FINDINGS OF FACT:

1. 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.

2. Judicial notice is taken of all relevant forms and correspondence contained in the Department's file relating to this claim.

3. Claimant has worked for Defendant since 1998. She has held various managerial, customer service and sales positions in Defendant's Waterbury, Vermont call center, all of which have required extensive computer work. For the past five years, she has been the call center's support services team manager.

Claimant's Prior History of Upper Extremity Complaints

4. Claimant has a history of relatively minor right upper extremity complaints, consistent with carpal tunnel syndrome, dating back at least to 2008. In August of that year, she treated with her primary care provider, Dr. Gelbstein, for numbness and tingling in her right wrist and forearm. Dr. Gelbstein prescribed medications and a wrist splint. Claimant also underwent a short course of deep tissue massage treatment with her chiropractor, Dr. Schaller, following which her symptoms resolved.

5. At work, Claimant sometimes used the physical therapy and ergonomic assessment resources that Defendant provided through its association with Injury and Health Management Solutions (IHMS). At one point, after the computer software program she used became more mouse- rather than keyboard-driven, Claimant began to experience pain in her right hand and wrist. Louise Lynch, an IHMS physical therapist, recommended ergonomic adjustments to her work station, which when implemented alleviated her symptoms.

6. Except for a brief period of time in early 2011 when she had to swap work stations with another manager, for roughly three years prior to August 2011 Claimant did not experience any significant right hand, wrist or arm pain. Her work station allowed her to either stand or sit, and with her mouse positioned at a lower level she manipulated it comfortably by reaching down with her right arm and hand rather than up.

Tropical Storm Irene

7. On August 28, 2011 Tropical Storm Irene hit Vermont with ferocious intensity, causing severe flooding in many communities, including Waterbury. In the aftermath of the storm, Defendant was forced to move large segments of its Waterbury operation elsewhere. Its 50-employee wholesale call center, which included Claimant's six-person team, was relocated to a facility in Essex Junction.

8. The move to Essex Junction was very stressful. Many of Claimant's co-employees lived in the Waterbury area, and on a personal level the storm had greatly disrupted their lives – they faced property damage, repair expenses, childcare issues and a significantly longer commute to and from work. At work, their "offices" were shared tables in a conference room. The accommodations were cramped and lacking in privacy, and the team had difficulty accessing the files and supplies they needed to do their jobs. As their supervisor, Claimant's attempts to troubleshoot and problem-solve were exhausting, both physically and mentally.

9. Claimant's workspace at the Essex Junction facility consisted of a small table in the conference room. She had a straight, non-ergonomic keyboard and a small area for her mouse. Unlike her Waterbury workstation, which was configured so that she reached down with her right arm and hand for the mouse, at this workspace she had to reach up for it. When she typed, her wrists rubbed uncomfortably against the edge of the table.

10. Within a couple of weeks after moving to the Essex Junction facility, Claimant started to experience discomfort in her right wrist. After about a month, her right hand was sore and tingly, and her left hand was beginning to hurt as well. Claimant managed her symptoms as best she could, by walking around, shaking her hands out and wearing her right wrist splint at night. She did not seek medical treatment.

11. For its part, Defendant consulted with IHMS as to how to improve the ergonomics of Claimant's and her team's workstations, but there was little to be done given the cramped conference room space. After a time, Defendant did provide Claimant with a larger table, but even with that she still was unable to position her mouse comfortably. In fact, she found that she experienced less discomfort in her hands when she worked from home in the evenings. By positioning herself in an armchair, with her computer in her lap and her mouse resting on the arm of the chair, she was better able to support her right hand than she could while sitting at her table at work.

12. As compared with her symptoms in September 2011, by mid-November the numbness and tingling in Claimant's right hand had worsened considerably, and was now almost constant. Her left hand hurt as well, though not as much. Claimant felt mentally stressed and physically exhausted.

Claimant's December 2011 Hospitalizations

13. Claimant did not feel well in the days leading up to Friday, December 2, 2011. She felt weak and thought she might be coming down with a cold. Also during that week she had begun taking a course of oral steroids as treatment for a recurrent skin rash.

14. On Friday evening, December 2, 2011 Claimant went to bed early, at around 6:00 PM. She did not wear her wrist splint. At approximately 10:30 PM, she awoke. Both of her hands were numb and she felt pain in both arms. Claimant became very anxious, and feared that she was having a heart attack or stroke. Her husband took her to the hospital emergency room.

15. As described in the emergency room records, Claimant presented with hypotension, tachycardia and a primary complaint of severe (ten-out-of-ten) pain in her right arm, with stiffness, numbness and tingling extending down to her fingers. She also reported pain between her shoulder blades and generalized weakness throughout her body. Emergency room doctors were unable to arrive at a clear diagnosis. Claimant was admitted for further observation and testing.

16. Claimant was hospitalized for three days (two in the intensive care unit), during which she underwent a battery of tests and was evaluated by specialists in internal medicine, neurology and cardiology. In addition to pain and paresthesias in her right arm, her symptoms also included swelling in her arms and over the tops of her feet bilaterally and tenderness in her shoulder blades, trapezius and biceps. The differential diagnoses included cervical spine degenerative disc disease, brachial plexopathy, septic shock, endocarditis, epidural abscess and/or systematic inflammatory response syndrome, a non-specific diagnosis used to signify an inflammatory condition affecting the entire body.

17. Claimant was discharged from the hospital on December 5, 2011 with her diagnosis still unclear. The discharge summaries reflect that she still had some swelling in her arms and "the same distribution of discomfort (though much improved)" with which she had presented on admission.

18. Claimant worked from home for most of the week following her discharge, during which her symptoms persisted. On Friday, December 9, 2011 she drove to Waterbury, attended a morning meeting and took notes on her laptop computer. As the meeting progressed, Claimant's hands became increasingly painful. By the time the meeting concluded and she got into her car to drive home, the pain was intense. Later that day, her husband took her back to the hospital emergency room.

19. This time, Claimant was hospitalized for five days. Her presenting complaints included "unbearable" pain and paresthesias in her arms and hands (right worse than left), profound weakness in both arms and labile blood pressure. Again she underwent a variety of tests and consultations, this time including rheumatology and clinical immunology as well as neurology. During this hospitalization, in addition to aching and swelling in her wrists, Claimant reported severe dull, achy pains throughout her body, swelling in her arms, fingers and feet, weakness in her right shoulder and tenderness in her trapezius and cervical spine. The differential diagnosis remained broad, and included autoimmune or infectious diseases, gout or pseudo-gout, musculoskeletal disorders and/or nerve irritation.

20. Faced with uncertainty as to the etiology of Claimant's complaints, her doctors treated her symptoms systemically, with a course of oral steroids to reduce pain and inflammation. When discharged on December 14, 2011 Claimant was still complaining of pain and numbness in her arms and hands, but was much improved from when she first presented. Her diagnosis was still unclear, and despite additional post-hospitalization blood work has never been positively determined.

21. Claimant did not think to mention the upper extremity symptoms she had been experiencing at work since September 2011 during either of her December hospitalizations. Neither she nor her providers considered carpal tunnel syndrome as a possible diagnosis for the complaints with which she presented at that time.

Claimant's Symptoms and Treatment since January 2012

22. After being discharged from her second hospitalization, on December 19, 2011 Claimant sought treatment with Dr. Mahoney, a chiropractor, for continued complaints of pain and weakness in her wrists, hands and arms bilaterally, and also neck and back pain. During this visit, for the first time she described her upper extremity symptoms in conjunction with her work activities. From this description, Dr. Mahoney concluded that Claimant was suffering from work-related carpal tunnel syndrome. As treatment, he performed various spinal manipulations, none of which successfully alleviated her symptoms. Claimant did not return for additional treatment.

23. On December 20, 2011 Claimant underwent electrodiagnostic testing. The results were consistent with mild to moderate bilateral carpal tunnel syndrome. There was no evidence of either cervical radiculopathy or ulnar nerve entrapment.

24. In early January 2012 Claimant began treating with Dr. Schaller, the same chiropractor who had treated her carpal tunnel symptoms in 2008. Over the course of the next several months, Dr. Schaller performed deep tissue massage, electrical stimulation and ultrasound. In addition, Claimant wore wrist splints bilaterally at night. Though her symptoms remained stable, she realized no sustained relief from Dr. Schaller's modalities. For that reason, in May 2012 she discontinued treatment.

25. As to the causal relationship between Claimant's carpal tunnel syndrome and her work, Dr. Schaller acknowledged that one "can never be 100% sure." However, given the temporal relationship between her office relocation in September and the onset of her symptoms, in his opinion there was "little doubt" that her carpal tunnel injury was work-related.

26. Claimant has been back to work since January 9, 2012. Her symptoms, which consist primarily of pain, numbness and tingling in her hands bilaterally, have remained persistent but stable – somewhat worse than they were in September 2011, but much improved from when she was hospitalized in December. Since discontinuing her treatment with Dr. Schaller in May 2012, she has not sought additional medical care directed specifically at her carpal tunnel syndrome. At the formal hearing, she indicated her willingness to consult with a hand surgeon, but is concerned about the cost of surgery should it not be covered under workers' compensation.

27. Claimant first sought workers' compensation coverage for her bilateral carpal tunnel syndrome in late December 2011, following her second hospitalization. Defendant has denied her claim on the grounds that her condition is not work-related.

Expert Medical Opinions

28. Two witnesses provided expert medical testimony at the formal hearing – Dr. Gelbstein on Claimant's behalf and Dr. Backus in support of Defendant's position.

(a) Dr. Gelbstein

29. Dr. Gelbstein is a board certified family practitioner, and has been Claimant's primary care physician for many years. She is familiar with the symptoms of carpal tunnel syndrome, and has diagnosed many patients with the condition over the years. Typically, she refers patients out for focused treatment rather than providing it herself. Dr. Gelbstein has no specialized training or expertise in assessing the causes of carpal tunnel syndrome. She is only generally familiar with recent medical literature on the subject.

30. To a reasonable degree of medical certainty, in Dr. Gelbstein's opinion Claimant's current upper extremity complaints are attributable to carpal tunnel syndrome, a condition that was either caused or exacerbated by the change in her work environment after Tropical Storm Irene. By moving to a workstation that was not ergonomically adjusted specifically for her, Dr. Gelbstein theorized, Claimant likely found herself performing computer-related tasks with her hands in a flexed position. Maintaining that position over a period of time would have compromised the carpal canal and caused painful symptoms to develop.

31. Dr. Gelbstein acknowledged that she has never personally viewed either Claimant's Essex Junction workstation or her Waterbury office. In formulating her opinion as to causation, she thus relied solely on Claimant's descriptions of the two in comparison to one another. Claimant having verbally described the two workstations with sufficient clarity at formal hearing, I find it likely that she was able to do so for Dr. Gelbstein as well.

32. Dr. Gelbstein also acknowledged that the diagnosis of work-related carpal tunnel syndrome does not explain the severe pain, generalized weakness and systemic complaints that prompted Claimant's two December 2011 hospitalizations. The possibility that those symptoms might have been attributable to some autoimmune disorder or inflammatory condition has been neither ruled in nor ruled out at this point. In any event, Dr. Gelbstein admitted that had Claimant been suffering solely from carpal tunnel syndrome, she likely would not have required hospitalization.

33. Last, Dr. Gelbstein acknowledged that she had not been aware that Dr. Schaller offered carpal tunnel syndrome treatment as part of his chiropractic practice until Claimant began seeing him for that purpose. Other than endorsing him generally as a competent provider, she did not state an opinion as to whether the treatment he provided was medically necessary.

(b) *Dr. Backus*

34. At Defendant's request, in March 2012 Claimant underwent an independent medical examination with Dr. Backus, a board certified specialist in occupational medicine. Dr. Backus took Claimant's history, conducted a physical exam and also reviewed the medical records available to him at the time. These included only some of the records relating to her December 3, 2011 hospitalization, and none at all relating to her December 9th hospitalization.

35. Consistent with her treating providers' opinions, Dr. Backus diagnosed Claimant with bilateral carpal tunnel syndrome. According to his analysis, Claimant likely had an underlying propensity for the condition, as evidenced by the relatively minor right hand and arm complaints for which she had treated in 2008. With stretching, splinting and ergonomic adjustments at work, her symptoms were well controlled. However, in the aftermath of Tropical Storm Irene the deficient ergonomics of her Essex Junction workstation[1] probably led first to some awkward postures and then to some musculoskeletal pain in her arms and thorax. With continued exposure and repetitive use, the tendons in the area likely became inflamed, which caused the median nerve to become irritated and swollen within the small confines of the carpal canal. Ultimately, this led to the constant pain, numbness and tingling that she was experiencing by November 2011.

36. Dr. Backus thus determined that by causing her underlying susceptibility to carpal tunnel syndrome to flare up into a clinical presentation, Claimant's work at the Essex Junction facility thereby exacerbated the condition. This conclusion flies somewhat in the face of what has become well established in the medical literature. According to the research, non-occupational risk factors such as age, gender and body mass correlate strongly with the development of carpal tunnel syndrome. Job-related factors such as force, repetition, posture and/or vibration may also present an increased risk, but only when they appear in combination with one another. With this research in mind, Dr. Backus acknowledged that Claimant's gender and age were strong risk factors. Nevertheless, at least initially he concluded that her keyboarding activities, combined as they were with the awkward postures necessitated by her workstation, were likely causative as well.

37. Three weeks after issuing his first report, in early April 2012 Dr. Backus issued a supplemental report. By this time he had reviewed the complete record of Claimant's December hospitalizations. He thus learned how serious her condition had been at that time. This new information caused him to reconsider his opinion as to the relationship, if any, between Claimant's work and her carpal tunnel syndrome.

[1] As Dr. Gelbstein had, in formulating his causation opinion Dr. Backus relied solely on Claimant's verbal description of her workstation; he did not view it personally.

38. Dr. Backus found particularly significant that during her hospitalizations Claimant had been noted to have swelling, weakness and sensory changes in all four of her extremities, not just in her hands or arms. As her doctors had, Dr. Backus theorized that these findings were indicative of a systemic inflammatory response or autoimmune disorder. To a reasonable degree of medical certainty, he now believes that this condition was what likely caused Claimant's carpal tunnel syndrome to flare up in December 2011, not her work activities.

39. Dr. Backus acknowledged that the systemic inflammation with which Claimant presented in December 2011 has never been definitively diagnosed. It is not uncommon for systemic or autoimmune disorders to present in unusual manners that only become clarified with time. Thus, the fact that no provider has yet identified a particular disorder from which she suffers does not necessarily mean that she does not have one.

40. While expressing certainty that the symptoms that immediately preceded Claimant's December hospitalizations were causally related to a systemic inflammatory response or autoimmune disorder, Dr. Backus was far less certain as to the cause of the wrist and hand symptoms that she had begun to experience in September. He could not state to the required degree of medical certainty that Claimant likely was already suffering from any such disorder at that time, and agreed that her symptoms might just as easily have been attributable to a developing tendinitis or mild carpal tunnel syndrome.

41. As for treatment of Claimant's current carpal tunnel syndrome symptoms, Dr. Backus stated that conservative modalities such as stretching, splinting, deep tissue massage, ultrasound and iontophoresis would all be appropriate, followed by injections, electrodiagnostic testing and surgery if these proved ineffective. There are no evidence-based treatment guidelines to justify chiropractic manipulation of the wrist as an effective approach. On the assumption that this was the type of treatment Dr. Schaller had provided between January and May 2012, Dr. Backus dismissed it as not medically reasonable. In fact, however, Dr. Schaller's treatment included at least some of the modalities Dr. Backus cited as appropriate, including both deep tissue massage and ultrasound. For that reason, I find his opinion in this regard suspect.

CONCLUSIONS OF LAW:

1. In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. *King v. Snide*, 144 Vt. 395, 399 (1984). He or she must establish by sufficient credible evidence the character and extent of the injury as well as the causal connection between the injury and the employment. *Egbert v. The 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 resulting disability, and the inference from the facts proved must be the more probable hypothesis. *Burton v. Holden Lumber Co.*, 112 Vt. 17 (1941); *Morse v. John E. Russell Corp.*, Opinion No. 40-92WC (May 7, 1993).

2. In this claim, the disputed issue is simply whether Claimant's carpal tunnel syndrome was either caused or aggravated by her work activities for Defendant since September 2011. The parties presented conflicting expert medical opinions on this question. In such cases, the commissioner traditionally uses a five-part test to determine which expert's opinion is the most persuasive: (1) the nature of treatment and the length of time there has been a patient-provider relationship; (2) whether the expert examined all pertinent records; (3) the clarity, thoroughness and objective support underlying the opinion; (4) the comprehensiveness of the evaluation; and (5) the qualifications of the experts, including training and experience. *Geiger v. Hawk Mountain Inn*, Opinion No. 37-03WC (September 17, 2003).

3. Applying these factors to the expert opinions offered here is challenging. On the one hand, Dr. Gelbstein is Claimant's treating physician. She is thus more familiar with Claimant's medical history, both as it concerns her carpal tunnel symptoms and as it relates to the possibility that she might be suffering from some systemic inflammatory or autoimmune disorder. On the other hand, Dr. Backus testified to greater familiarity with the recent medical literature and evidence-based research as to occupational versus non-occupational risk factors for carpal tunnel syndrome.

4. Having closely considered each expert's opinion, I conclude that Dr. Gelbstein's is the most credible. Her analysis of how the deficiencies in Claimant's Essex Junction workstation likely required her to maintain her wrists in a flexed position over a period of time, thus compromising the carpal canal, is actually quite similar to the analysis Dr. Backus initially advanced. That the combination of repetitive activities and awkward postures is what caused Claimant's preexisting propensity for carpal tunnel syndrome to flare up into a clinical presentation is consistent with both the medical literature and the chronology of her symptoms. I conclude that it is persuasive.

5. In contrast, Dr. Backus' opinion failed to account adequately for the manner in which Claimant's symptoms developed. Had there been evidence from which he could determine, to the required degree of medical certainty, that the carpal tunnel symptoms Claimant was exhibiting from September through November 2011 were due to a burgeoning systemic inflammatory response or autoimmune disorder, I might have found his opinion persuasive. In that event, a clear relationship would have been established between Claimant's initial, relatively minor complaints and the far more severe ones that prompted her December hospitalizations. It would have made sense to attribute all of those complaints to the same disease process.

6. As it is, however, Dr. Backus' opinion falls short. The fact is the carpal tunnel symptoms for which Claimant is now seeking treatment are essentially the same as those she began experiencing in September 2011. It is reasonable to assume the same root cause, therefore. The evidence does not establish a systemic disorder or autoimmune disease that might have triggered carpal tunnel syndrome prior to December 2011, but it does establish occupational risk factors.

7. I conclude that Claimant has sustained her burden of proving that her bilateral carpal tunnel syndrome is causally related to her work activities and is therefore compensable.

8. As for the compensability of the medical treatment Claimant has received to date, in accordance with Dr. Backus' opinion I conclude that the electrodiagnostic testing Claimant underwent on December 20, 2011 was medically appropriate and is therefore compensable. I accept as credible Dr. Backus' opinion that chiropractic manipulation is not a reasonable technique for treating carpal tunnel syndrome symptoms, and therefore I conclude that Dr. Mahoney's January 2012 treatment is not compensable. To the extent that the treatments Dr. Schaller rendered between January and May 2012 involved modalities that Dr. Backus identified as appropriate, such as deep tissue massage, ultrasound and/or iontophoresis, I conclude that the costs associated with those specific therapies are compensable.

9. Claimant does not appear to be claiming either medical or indemnity benefits relative to her December 2011 hospitalizations. As both Dr. Gelbstein and Dr. Backus agreed that those hospitalizations were not in any way causally connected to her work activities, I conclude that she is not entitled to workers' compensation benefits referable to them.

10. As Claimant has prevailed on her claim for benefits, she is entitled to an award of costs and attorney fees. In accordance with 21 V.S.A. §678(e), Claimant shall have 30 days from the date of this opinion within which to submit her itemized claim.

ORDER:

Based on the foregoing findings of fact and conclusions of law, Defendant is hereby **ORDERED** to pay:

1. Medical benefits covering Claimant's December 20, 2011 electrodiagnostic testing, as well as the cost of deep tissue massage, ultrasound and/or iontophoresis modalities provided by Dr. Schaller as treatment for her bilateral carpal tunnel syndrome, in accordance with 21 V.S.A. §640(a);

2. Such other workers' compensation benefits to which Claimant proves her entitlement as causally related to her compensable carpal tunnel syndrome, including future indemnity and/or medical benefits; and

3. Costs and attorney fees in amounts to be determined, in accordance with 21 V.S.A. §678.

DATED at Montpelier, Vermont this 18th day of March 2013.

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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 V.S.A. §§670, 672.