

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

CHERI SEEMANN

Claimant

v.

GRANDVIEW PRODUCTS CO. INC.

Respondent

AP-00-0480-608

CS-00-0457-172

and

STATE NATIONAL INSURANCE COMPANY

Insurance Carrier

ORDER

Claimant appeals the December 22, 2023, Preliminary Hearing Order issued by Administrative Law Judge (ALJ) Brian Brown.

APPEARANCES

William L. Phalen appeared for the Claimant. Katie M. Clifford appeared for Respondent and its insurance carrier (Respondent).

RECORD AND STIPULATIONS

The Appeals Board adopted the same stipulations and considered the same record as the ALJ, consisting of the transcript of Preliminary Hearing, held November 14, 2023, with Claimant's Exhibits 1-7 and Respondent's Exhibits 1-6; the transcript of Deposition of Cheri Seemann, taken October 28, 2022, the pleadings and orders contained in the administrative file, and the parties' briefs.

ISSUE

Did Claimant sustain personal injuries from repetitive trauma arising out of and in the course of her employment with Respondent?

FINDINGS OF FACT

Claimant worked for Respondent, a cabinet factory, from April 2018 through 2020. Claimant put wooden boards on a machine, which cut the boards to size. Claimant's work required her to use both hands repetitively as she ran 500-600 boards through the machine per day. Claimant's work also required forceful gripping and grasping with both hands.

Claimant first noticed pain and other problems with her right hand in February 2020. Claimant testified she developed symptoms in her left hand shortly thereafter. Claimant denied she was involved in any accidents. Claimant denied seeing health care providers for her hands or wrists before February 2020. Claimant reported her symptoms to Respondent, and she was referred to Labette Health for medical treatment. Claimant was diagnosed with a sprain and prescribed a brace. Claimant's symptoms persisted, and she was referred to Dr. Mosier.

Claimant saw Dr. Mosier on November 16, 2020. Claimant reported a gradual onset of right wrist pain in March 2020, which was aggravated by her repetitive work. Examination of the right wrist revealed tenderness of the first dorsal extensor compartment and no swelling. An x-ray performed on November 12, 2020, was interpreted as showing proximal scaphoid sclerosis with osteonecrosis versus degenerative changes, and degenerative changes at the first MP joint. Dr. Mosier thought the x-ray indicated an old, healed scaphoid fracture or arthritic changes. Dr. Mosier diagnosed early primary osteoarthritis, and no clinical signs supporting tendinosis. Dr. Mosier ordered an MRI and imposed light-duty restrictions.

Claimant underwent the right wrist MRI on December 5, 2020. Dr. Mosier subsequently interpreted the study as degraded by motion artifact, but also revealing a nonunion scaphoid fracture with dysvascular changes. Dr. Mosier did not believe arthritic changes were present. Dr. Mosier diagnosed right wrist scaphoid fracture nonunion, and referred Claimant to a hand specialist. On December 28, 2020, Dr. Mosier completed a form submitted by the adjuster for the insurance carrier confirming the right scaphoid fracture was the cause of Claimant's symptoms and pain. Dr. Mosier also wrote Claimant's work aggravated Claimant's condition, but did not cause it.

Claimant initially saw Dr. Mih, an orthopedic surgeon specializing in upper extremities, on December 22, 2020. Claimant reported right thumb and wrist pain since March 2020. A specific trauma or injury was denied, but Claimant reported experiencing discomfort with her work. Examination was notable for limited range of motion of the right wrist. X-rays were interpreted as showing changes to the scaphoid with a possible fracture. Dr. Mih thought evidence of a right dysvascular scaphoid was present. Due to motion artifact in the MRI, Dr. Mih ordered an MR arthrogram of the right wrist.

On January 26, 2021, Claimant returned to Dr. Mih with continued right upper extremity pain. The MR arthrogram was interpreted as showing evidence of dysvascular changes to the scaphoid with evidence of scapholunate ligament and other intercarpal ligament injury. Dr. Mih also noted diffuse changes of the scaphoid, which did not show a discrete fracture. Dr. Mih thought Claimant's condition was likely caused by work because no other known trauma was present. Dr. Mih wanted Claimant to return for a follow-up in three months.

Dr. Murati evaluated Claimant, at her attorney's request, on May 5, 2021. Claimant reported bilateral hand pain and right thumb symptoms from overuse. Claimant was not working. Claimant's course of treatment was reviewed. Dr. Murati did not review radiologic films. Examination was notable for almost no grip strength on the right side compared to the left. Decreased sensation of the right median nerve distribution and positive carpal compression bilaterally was also noted. Dr. Murati stated Claimant's right hand was warmer, swollen and demonstrated hair loss. Dr. Murati diagnosed post-scapoid fracture of the right wrist, possible complex regional pain syndrome of the right upper extremity, bilateral carpal tunnel syndrome, and degenerative joint disease of the first right CMC joint. Dr. Murati thought all of Claimant's conditions were related to her work. Additional testing and treatment was recommended.

ALJ Roth appointed Dr. Winston, an orthopedic surgeon specializing in upper extremities, to perform a Court-ordered independent medical examination. Dr. Winston evaluated Claimant's upper extremities on September 30, 2021. Dr. Winston noted Claimant reported the onset of right hand and wrist pain in February 2020 while unloading boards from a pallet and loading the boards into a machine. Claimant also reported symptoms at the base of the right thumb and right hand numbness since February 2020. Claimant reported numbness and tingling of the left hand since March 2020.

Dr. Winston's examination was notable for no swelling or ecchymosis, no thenar atrophy, tenderness at the snuffbox and tenderness at the radial aspect of the right wrist. Tinel's and median compression tests were positive bilaterally. X-rays were interpreted by Dr. Winston as showing a prior fracture and nonunion at the waist of the right scaphoid with avascular necrosis at the proximal pole, degenerative changes at the radial styloid articulation, and degenerative changes of the first CMC joint with cystic formation in the trapezium. Dr. Winston noted a distinct fracture line at the scaphoid. The x-rays were also interpreted as showing no acute or degenerative changes at the left wrist.

Dr. Winston diagnosed a right chronic scaphoid nonunion with resulting avascular necrosis at the proximal pole, right thumb CMC arthritis and bilateral carpal tunnel syndrome. Dr. Winston did not believe the scaphoid nonunion and resulting avascular necrosis were related to an incident in February 2020. Dr. Winston believed the February 2020 incident most likely aggravated the CMC arthritis of the thumb. Dr. Winston, however, believed Claimant's work was the prevailing factor causing the bilateral carpal tunnel syndrome. An EMG/NCV study was recommended.

On October 12, 2022, Dr. Winston issued a supplemental report. Dr. Winston reviewed an MRI of January 20, 2021, and stated his prior diagnosis was unchanged. Dr. Winston thought Claimant had a scaphoid nonunion advanced collapse from a scaphoid nonunion progressing over time to the scapholunate ligament, midcarpal joint and lunotriquetral joint. Dr. Winston stated this process occurred over a period of years and

not as a result of a February 2020 injury. Dr. Winston reiterated his bilateral carpal tunnel syndrome diagnosis, and the recommendation of an EMG/NCV study.

The EMG/NCV study was performed by Dr. Sisk on November 29, 2022. Dr. Sisk interpreted the study as showing evidence of neuropathy at the right elbow. Dr. Sisk found no electrodiagnostic evidence of bilateral carpal tunnel syndrome, radial neuropathy or peripheral neuropathy.

At the request of ALJ Roth, Dr. Winston issued another supplemental report dated January 24, 2023. Dr. Winston confirmed he evaluated Claimant on September 30, 2021, and he understood Claimant reported symptoms after lifting a pallet in February 2020. Dr. Winston reviewed the EMG/NCV study, and thought it was negative for bilateral carpal tunnel syndrome. Dr. Winston thought the EMG/NCV was positive for right-sided cubital tunnel syndrome, which he thought was an incidental finding. Dr. Winston diagnosed preexisting scaphoid nonunion advanced collapse and right thumb arthritis, which was not related to a work accident occurring on February 3, 2020. Dr. Winston also stated Claimant developed right wrist arthritis due to the chronic scaphoid waist nonunion producing a progressive wrist over many years. Dr. Winston stated Claimant's CMC joint arthritis was due to age-related degenerative changes. Dr. Winston concluded Claimant did not require medical treatment to address work-related injuries.

Claimant returned to Dr. Mih on June 27, 2023. Dr. Mih's report stated testing and imaging showed vascular changes and ligament injury to the right wrist, which was determined to be work-related in 2021. Dr. Mih thought Claimant demonstrated further deterioration of the wrist, with daily symptoms and limited range of motion.

On August 8, 2023, Dr. Mih issued a letter to Claimant's counsel stating Claimant had avascular necrosis of the right scaphoid, with disabling pain at the right wrist. Dr. Mih reiterated his opinion Claimant's condition was work-related in the absence of a history of other trauma. Dr. Mih recommended a proximal row carpectomy.

Claimant sought authorized medical treatment by Dr. Mih, and a preliminary hearing was held on November 14, 2023. On December 22, 2023, ALJ Brown issued the Preliminary Hearing Order. ALJ Brown reviewed Claimant's repetitive work activities and symptoms. Claimant's course of treatment and examinations were reviewed. ALJ Brown concluded Dr. Mosier's opinions were not determinative because he did not review an MRI or the arthrogram. ALJ Brown did not believe Dr. Murati was credible because he was not a specialist, and because Dr. Murati diagnosed complex regional pain syndrome when no one else did. ALJ Brown noted Dr. Winston reviewed MRI scans and the EMG/NCV, and believed Claimant's prior scaphoid nonunion caused avascular necrosis over a years-long disease process, and the right thumb pathology was unrelated to work. ALJ Brown also noted Dr. Mih did not identify a scaphoid fracture or was clear if Claimant would have developed avascular necrosis without a fracture or nonunion. ALJ Brown found the

opinions of Dr. Winston more credible than those of Dr. Mih, and concluded Claimant did not prove she sustained work-related injuries. Claimant's request for medical treatment was denied. These review proceedings follow.

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues the Preliminary Hearing Order is erroneous because Claimant performed forceful repetitive work for Respondent and Dr. Mih linked Claimant's work to her right upper extremity injuries. Claimant argues Dr. Mih's qualifications are superior to Dr. Winston's, and Dr. Mih saw Claimant more recently. Therefore, Dr. Mih's opinions are more credible than Dr. Winston's. Respondent argues the Preliminary Hearing Order was decided correctly.

It is the intent of the Legislature the Workers Compensation Act be liberally construed only for the purpose of bringing employers and employees within the provisions of the Act.¹ The provisions of the Workers Compensation Act shall be applied impartially to all parties.² The burden of proof shall be on the employee to establish the right to an award of compensation, and to prove the various conditions on which the right to compensation depends.³

Claimant alleges she sustained injuries from repetitive trauma. An injury by repetitive trauma shall be compensable only if employment exposes the worker to an increased risk of injury, the employment is the prevailing factor in causing the repetitive trauma and the repetitive trauma is the prevailing factor in causing the medical condition.⁴ Moreover, the repetitive nature of the injury must be demonstrated by diagnostic or clinical tests.⁵ "Prevailing factor" is defined as the primary factor compared to any other factor, based on consideration of all relevant evidence.⁶

It is undisputed Claimant's work involved constant repetitive work with both upper extremities. It is also undisputed Claimant suffers from dysvascular changes of the scaphoid. The medical evidence of other injuries, however, is contradictory. The cause

¹ See K.S.A. 44-501b(a).

² See *id.*

³ See K.S.A. 44-501b(c).

⁴ See K.S.A. 44-508(f)(2).

⁵ See K.S.A. 44-508(e).

⁶ See K.S.A. 44-508(g).

of Claimant's medical condition is also at issue. The Board is charged with reviewing all relevant evidence to determine the extent of Claimant's injuries and whether Claimant met her burden of proving repetitive trauma was the prevailing factor causing her condition.

Claimant consistently testified and reported to health care providers she did not have problems with her upper extremities before the repetitive trauma which is the subject of this claim. Claimant consistently reported a gradual onset of symptoms initially on the right side culminating in March 2020, followed by symptoms on the left side. Medical treatment focused on the right side. Despite being off work since 2020, Claimant's symptoms persist and Dr. Mih stated her condition is worsening.

Dr. Murati diagnosed a scaphoid fracture, degenerative joint disease of the CMC joint of the right thumb, possible complex regional pain syndrome and bilateral carpal tunnel syndrome. Dr. Murati did not review radiologic studies. Dr. Murati did not review the EMG/NCV. None of the other examining or treating physicians identified clinical signs of complex regional pain syndrome. These deficiencies undermine the credibility of Dr. Murati's opinions. Dr. Murati did not explain how the degenerative process at the CMC joint of the right thumb was caused primarily by Claimant's work.

Dr. Mosier evaluated Claimant and reviewed radiologic studies. The MRI Dr. Mosier reviewed was limited due to motion artifact, but Dr. Mosier still diagnosed a right scaphoid fracture nonunion with dysvascular changes. Dr. Mosier also diagnosed degenerative changes at the first MP joint. Dr. Mosier did not review the subsequent MR arthrogram or the EMG/NCV, and did not see Claimant after 2020.

Dr. Mih saw Claimant on multiple occasions as a treating physician. Based on review of the radiologic studies, including the MR arthrogram, Dr. Mih diagnosed avascular necrosis and ligament injuries of the right scaphoid, which he believed to be the source of Claimant's pain. Dr. Mih is silent to whether Claimant's CMC joint of the right thumb was injured. It does not appear Dr. Mih treated or evaluated the left wrist. Dr. Mih did not identify a discrete fracture of the right scaphoid, which is contrary to the findings of the other physicians. Dr. Mih appears to base his causation opinion on "recognized causes"⁷ of avascular necrosis, and the lack of a reported history of trauma, rather than consideration of Claimant's work duties. Nevertheless, Dr. Mih clearly links Claimant's repetitive work to her avascular necrosis and ligament injury.

Dr. Winston was appointed by the Court to perform an independent medical examination. Dr. Winston reviewed all the radiologic studies and the EMG/NCV study. Dr. Winston initially diagnosed work-related carpal tunnel syndrome, but later stated Claimant did not sustain a work-related injury after the EMG/NCV indicated no evidence of carpal

⁷ P.H., Cl. Ex. 1.

tunnel syndrome. Dr. Winston also thought the evidence of right-sided cubital tunnel syndrome revealed by the EMG/NCV was an incidental finding in the absence of clinical signs. Dr. Winston identified clear evidence of a scaphoid fracture based on the x-rays he reviewed. Dr. Winston thought the nonunion of the fracture caused a years-long process resulting in avascular necrosis and radioscaphoid joint arthritis, which was not work-related based on his understanding of Claimant's work in February 2020. Dr. Winston also thought Claimant suffered from arthritis of the right CMC thumb joint, which work likely aggravated. Dr. Winston saw Claimant one time.

Having considered the various medical records in the current record, the undersigned Board Member finds the opinions of Dr. Winston the most credible by the barest of margins. Although Dr. Winston refers to an accident in February 2020, his description of the mechanism of injury is repetitive work. Dr. Winston clearly identified a fracture of the right scaphoid, and stated the nonunion of the fracture started a years-long process resulting in avascular necrosis and radioscaphoid joint arthritis. Dr. Winston's fracture diagnosis was shared by Dr. Mosier and Dr. Murati. Dr. Winston also diagnosed arthritis of the CMC joint of the right thumb, which was not work-related. The determination Claimant did not suffer from bilateral carpal tunnel syndrome was supported by the EMG/NCV study. Although Dr. Winston only saw Claimant on one occasion, his opinions are supported by review the extensive tests and radiologic studies. Dr. Winston was also the neutral physician appointed as the Court's expert, which bolsters his credibility. Based on Dr. Winston's opinions, the undersigned concludes Claimant did not meet her burden of proving she sustained compensable injuries from repetitive trauma arising out of and in the course of her employment with Respondent.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member the Preliminary Hearing Order issued by ALJ Brian Brown, dated December 22, 2023, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of May, 2024.

WILLIAM G. BELDEN
APPEALS BOARD MEMBER

CHERI SEEMANN

8

AP-00-0480-608
CS-00-0457-172

c: Via OSCAR

William L. Phalen
Katie M. Clifford
Hon. Brian Brown