

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

AMANDA FUNK)	
Claimant)	
V.)	
)	AP-00-0482-495
MASONITE CORP.)	CS-00-0470-558
Respondent)	
AND)	
)	
FARMINGTON CASUALTY COMPANY)	
Insurance Carrier)	

ORDER

Claimant appealed the April 14, 2024 Award by Administrative Law Judge (ALJ) Brian Brown. The Board heard oral argument on August 15, 2024. William L. Phalen appeared for Claimant. Mark J. Hoffmeister appeared for Respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, the documents of record filed with the Division and the following:

1. Transcript of Regular Hearing, taken July 7, 2023;
2. Deposition Transcript of Amanda Funk, taken July 18, 2023;
3. Deposition Transcript of Dr. Pedro A. Murati, taken September 12, 2023, with exhibits; and
4. Deposition Transcript of Dr. J. Clinton Walker, taken December 21, 2023, with exhibits.

ISSUES

1. What is the nature and extent of Claimant's disability?
2. Is Claimant entitled to future medical benefits?

FINDINGS OF FACT

Claimant is 31 years of age, and worked for Respondent as a line lead for the production line for approximately two years prior to her injury. Claimant generally worked from a desk and communicated with her supervisor and other line leads via texts on her cell phone.

On September 15, 2022, Claimant was standing at her desk, waiting for an end-of-shift report. A co-worker removed Claimant's cell phone from her back pocket and refused to give it back to her. Claimant reached around her co-worker and yanked the cell phone out of his hand. Unbeknownst to Claimant, her co-worker had open razor blades (used to scrape off excess glue) in the same hand. Claimant lacerated her right ring and little fingers on the open razor blades. A rag was placed around Claimant's fingers and she was taken to the first aid room where the nurse tried to stop the bleeding, which took three hours. Once the nurse got the bleeding to stop, Steri-strips were applied, her fingers were wrapped in gauze and she was sent home.

Claimant's husband picked her up from work and took her home. Shortly after returning home, Claimant's husband took her to the ER at Ascension Via Christi Hospital in Pittsburg. She received four stitches in her right ring finger, in the distal portion of the palm surface. She received no stitches in her right little finger. The ER staff told Claimant to return later to have the sutures removed, which she did approximately ten days later. Claimant worked with light duty restrictions until her stitches were removed. Claimant was referred to occupational therapy for one visit, where they provided home exercises for her fingers. After her stitches were removed, Claimant returned to work, without restrictions. Claimant still works for Respondent.

Claimant is right hand dominant. According to Claimant, she has numbness and tingling from the fingertips of her right ring and little fingers into the palm of her hand and wrist. She reports some days are worse than others and the numbness and tingling in her ring finger is constant, while the little finger is occasional. The numbness and tingling affect her ability to grip. The loss of grip strength has resulted in Claimant using her left hand more than her right at home and work. Gripping causes pain from the tip of her fingers to her hand. Claimant also suffers from loss of sensation.

At her attorney's request, Claimant was evaluated by Pedro A. Murati, M.D., on March 3, 2023. Dr. Murati is board-certified in physical medicine, rehabilitation, electrodiagnosis, independent evaluations and pain medicine. He is also an assistant professor for Kansas City Medical University. Dr. Murati has provided treatment to injuries like Claimant's. Claimant reported she has issues with writing, typing, housework, lifting/carrying groceries, driving, grasping and tactile discrimination (sense of touch). Dr. Murati diagnosed Claimant with lacerations to her right ring and little finger, resulting in dysesthesias (unpleasant, abnormal sense of touch) to those fingers and loss of grip

strength in her right hand. Dr. Murati described dysesthesias as an abnormal sensation and “an amplified painful response to a painful stimuli.”¹ According to Dr. Murati, typically, minor lacerations to nerves heal. Those that do not heal result in abnormalities such as those Claimant experiences, loss of sensation and grip strength.

Using the *AMA Guides to the Evaluation of Permanent Impairment*, 6th edition (*Guides*, 6th ed.), as a starting point and based on competent medical evidence, Dr. Murati opined Claimant has 10% functional impairment of the hand due to sensory loss of the right ring finger. Dr. Murati testified his 10% rating was actually based wholly on the *Guides*, 6th ed., not simply as a starting point. The *Guides*, 6th ed., allow for the 3% rating to be increased if it does not cover everything. Dr. Murati opined the 3% rating needed to be increased to 10% because of the dysesthesia Claimant experiences, which results in an uncomfortable feeling in her hand with everything she touches and the loss of grip strength, which affects her activities of daily living.

Dr. Murati opined future medical treatment was required. He recommended Claimant have yearly follow-ups to address any subsequent complications for her right ring and little fingers. According to Dr. Murati, the type of injury Claimant suffered can develop into a minor causalgia or chronic regional pain syndrome, which would require medical treatment. At Claimant’s request, Dr. Murati did not provide permanent work restrictions.

At Respondent’s request, Claimant was evaluated on October 16, 2023, by John Clinton Walker, M.D., a board-certified orthopaedic surgeon, who specializes in hand and upper extremity surgery. Claimant reported no symptoms in her right little finger, but her right ring finger continued to bother her. She reported her ring fingertip was numb and somewhat hypersensitive with firm gripping and squeezing. Claimant has some “shooting” pain up the finger at times with direct pressure at the laceration site. Claimant believed she had full motion of the finger.

Upon examination of Claimant’s right ring finger, Dr. Walker found decreased sensation in the volar (palm side) fingertip distal to the healed laceration site, with subjective lack of sensation. Claimant had tenderness with firm palpation at the scar and pain with Tinel’s testing. She was not hypersensitive to light touch. Claimant was able to make a fist and fully extend her fingers. Upon examination of Claimant’s right small finger, Dr. Walker found Claimant had full finger motion and no tenderness.

Dr. Walker noted Claimant suffered lacerations to her right ring and little fingertips, resulting in injury to both terminal digital nerve branches (radial and ulnar) in her right ring finger. He opined Claimant’s impairment and deficits were local and isolated to the right ring finger.

¹ Murati Depo. at 9.

Using the *Guides*, 6th ed., as a starting point and based on competent medical evidence, Dr. Walker opined Claimant sustained 0% functional impairment to the right little finger and 5% functional impairment to the right ring finger (3% for the radial digital nerve and 2% for the ulnar digital nerve). He stated 5% to the ring finger converts to 1% to the hand. Dr. Walker opined Claimant did not need permanent work restrictions and does not need future medical benefits. According to Dr. Walker, injuries like the laceration suffered by Claimant to her ring finger can result in a loss of grip strength. He did not perform grip strength tests or assess impairment for loss of grip strength because he opined it was not appropriate to do so.

According to Dr. Walker, it is not uncommon to have residual symptoms with nerve injuries, usually pain or tenderness, that do not completely go away. It was his experience nerve injuries like Claimant's do not worsen over time. If the injury did worsen, treatment options were extremely limited. Creams, medicines or surgery are not beneficial. If the injury continued to provide significant problems, amputation was an option. Dr. Walker, based on his examination of Claimant's finger, did not believe amputation was an option for her. Dr. Walker conceded Claimant suffered an injury which may require future medical treatment, but not at this point in time.

The ALJ found Claimant has 3% functional impairment to the right hand and denied her request for future medical benefits. In awarding Claimant 3% functional impairment to the right hand, the ALJ found the opinions of Dr. Walker more credible than Dr. Murati because Dr. Walker is a hand surgeon and specialist and "Dr. Murati's self-perceived superior abilities did not reflect particularly well on his credibility as an evaluating physician."²

The ALJ noted:

As the credible medical evidence establishes Claimant's ring finger nerve injury can impact her ability to tightly grip with her hand, the court finds sufficient evidence to assess her impairment at the level of her hand.

...

Taking into account Claimant's credible symptoms, and after assessing the ratings of both doctors, the Court finds Claimant has sustained a 3% impairment at the level of her hand, which was the value Dr. Murati assessed while "strictly" utilizing the 6th Edition.³

² ALJ Award (April 15, 2024) at 7.

³ See *id.* at 8.

Regarding the denial of future medical benefits, the ALJ stated:

Neither doctors' testimony, nor any other credible testimony, meets the evidentiary standard K.S.A. 44- requires in order to overcome the statutory presumption: that it is more probably true than not that additional medical treatment will be necessary after Claimant has reached maximum medical improvement. Claimant's reliance upon speculative future medical opinions does not, in the Court's view, satisfy her burden to overcome the presumption to establish it is more likely than not she will require future care. The Court therefore, finds Claimant has failed to provide sufficient and credible evidence to establish that it is more probably true than not that additional medical treatment **will** be necessary after Claimant has reached maximum medical improvement.⁴

Claimant appealed urging the Board to find Claimant has 10% functional impairment to the right hand and award future medical benefits. Respondent maintains the Board should affirm the Award.

PRINCIPLES OF LAW AND ANALYSIS

The burden of proof shall be on the employee to establish the right to an award of compensation, based on the entire record under a "more probably true than not" standard and to prove the various conditions on which the right to compensation depends.⁵ The Appeals Board possesses authority to review *de novo* all decisions, findings, orders and awards of compensation issued by administrative law judges.⁶ A *de novo* hearing is a decision of the matter anew, giving no deference to findings and conclusions previously made by the administrative law judge.⁷

1. Claimant has 5.5% functional impairment to the right hand based on a split of the ratings provided by the two retained medical experts.

In *Johnson v. U.S. Food Service*⁸, the Kansas Supreme Court held in rating whole body impairments the ratings calculations should begin with the *Guides*, 6th edition as a starting point and consider competent medical evidence to modify or confirm the rating. In

⁴ See *id.* at 11.

⁵ See K.S.A. 44-501b(c) and K.S.A. 44-508(h).

⁶ See K.S.A. 44-555c(a).

⁷ See *Rivera v. Beef Products, Inc.*, No. 1,062,361, 2017 WL 2991555 (Kan. WCAB June 22, 2017).

⁸ *Johnson v. U.S. Food Service*, 312 Kan. 597, 478 P.3d 776 (2021).

*Weaver v. United Government of Wyandotte County*⁹, the Kansas Court of Appeals extended this analysis to scheduled injuries:

The plain language of K.S.A. 44-510d(b)(23), read in context, thus counsels that ratings for scheduled injuries may consider competent medical evidence and need not be based solely on the relevant edition of the Guides. The Guides serve as a starting point, yet not necessarily an ending point.

...

So for scheduled injuries as well as for non-scheduled injuries, the key fact—the percentage of functional impairment—must always be proved by competent medical evidence.¹⁰

The medical evidence in the record was provided by two medical experts retained by the parties. Claimant's expert, Dr. Murati, opined Claimant has 10% functional impairment to the right hand, and Dr. Walker, Respondent's expert 1%. The Board was fortunate in this matter to have medical opinions from the experts providing insight from different perspectives. Dr. Walker provided opinions from a surgical perspective and Dr. Murati from a physical rehabilitation perspective. Both opinions have merit and are found to be credible.

Ratings based solely on the *Guides*, 6th ed., can be sufficient to make a medically competent assessment of a workers functional impairment rating. The physician must make clear they are adopting a specific functional impairment, strictly from the *Guides*, 6th ed., provides a sufficient basis for their medically competent assessment. Dr. Walker chose not to deviate from the *Guides*, 6th ed., opining the strict interpretation rating was appropriate. Dr. Murati chose to deviate from a strict interpretation rating opining the increased functional impairment was necessary to truly reflect Claimant's loss of functional ability to perform daily and work tasks due to pain and loss of grip strength. There is no compelling rationale to discard one opinion over the other. Averaging competent ratings in an award of compensation has been routinely approved by the Board. The compelling medical evidence presented to the Board in this matter makes this an appropriate situation to average the physician's ratings. Claimant has 5.5% functional impairment to the right hand.

⁹ *Weaver v. United Government of Wyandotte County*, 63 Kan. App. 2d 773, 539 P.3d 617 (2023).

¹⁰ See *id.* at 11.

2. Claimant is entitled to future medical benefits.

The employer's liability for compensation includes the duty to provide medical treatment as may be reasonably necessary to cure or to relieve the effects of the injury.¹¹ It is presumed the employer's obligation to provide medical treatment terminates upon the employee's reaching maximum medical improvement. The presumption may be overcome with medical evidence it is more probably true than not additional medical treatment will be necessary after maximum medical improvement.¹²

The ALJ denied Claimant's request for future medical treatment finding the medical evidence relied upon speculative future medical opinions. Dr. Walker's report and testimony stated Claimant would not require future medical treatment. He conceded, however, Claimant may require future medical treatment, possibly an amputation of the affected finger. Dr. Murati opined future medical treatment was required. He recommended Claimant have yearly follow-ups to address subsequent complications for her right ring and little fingers. Here, we again have the benefit of medical opinions from different perspectives.

Dr. Murati's opinion Claimant will require future medical is the most credible. His report and testimony are medical evidence. Under K.S.A. 44-510e, Claimant provided sufficient medical evidence showing it is more probably true than not additional medical treatment will be necessary after she was placed at MMI, thereby overcoming the presumption Respondent's obligation to provide medical treatment upon her reaching MMI terminated. The Award denying future medical benefits for Claimant's injuries is reversed and Claimant is awarded future medical benefits.

AWARD

WHEREFORE, it is the finding, decision and order of the Board the Award of ALJ Brian Brown, dated April 15, 2024, is modified to award Claimant 5.5% functional impairment to the right hand. The denial of future medical benefits is reversed. Claimant is awarded future medical benefits upon proper application.

For the September 15, 2022 work-related injury to Claimant's right hand, she is entitled to 8.25 weeks of permanent partial disability at the rate of \$600.80 per week, or \$4,956.60, for a 5.5% permanent partial functional disability, making a total award of \$4,956.60, which is all due and owing and ordered paid in one lump sum, less any amounts previously paid.

¹¹ See K.S.A. 44-510h(a).

¹² See K.S.A. 44-508h(e).

IT IS SO ORDERED.

Dated this day of August, 2024.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: (Via OSCAR)

William L. Phalen, Attorney for Claimant
Mark J. Hoffmeister, Attorney for Respondent and its Insurance Carrier
Hon. Brian Brown, Administrative Law Judge