

STATE OF WEST VIRGINIA
WORKERS' COMPENSATION OFFICE OF JUDGES
P. O. Box 2233, Charleston, WV 25328
Telephone (304) 558-0852

IN THE MATTER OF:

[REDACTED]
CLAIMANT

and

[REDACTED]
EMPLOYER

RE: OOJ Case ID. OOJ [REDACTED]

JCN: [REDACTED]

CRN: [REDACTED]

DOI: [REDACTED]

DECISION OF ADMINISTRATIVE LAW JUDGE

PARTIES:

Claimant, [REDACTED], by Counsel, Kendall Partlow
Employer, [REDACTED], by Counsel, Jeffrey B. Brannon

ISSUE:

The claimant protested the Claim Administrator's Order of February 27, 2009, which denied the claim as the disability complained of was not due to an injury received in the course of and resulting from employment.

DECISION:

It is ORDERED that the Claim Administrator's Order of February 27, 2009, be AFFIRMED.

RECORD CONSIDERED:

1. EMG/NCV study of Dr. Joby Joseph of January 9, 2009
2. Treatment records from Logan Regional Medical Center dated January 21, 2009
3. Employee's and Physician's Report of Injury dated January 21, 2009
4. Undated letter from the claimant
5. Claim Administrator's Order of February 3, 2009
6. Report of Dr. Hennessey of August 3, 2009

- [REDACTED]
- [REDACTED]
7. Report of Dr. Mukkamala of August 4, 2009
 8. Affidavit of the claimant dated August 6, 2009
 9. August 10, 2009 hearing
 10. Employer's closing argument of August 10, 2009

FINDINGS OF FACT:

1. The claimant completed an Employee's and Physician's Report of Injury on January 21, 2009 wherein she indicated that she injured both wrists while working as a radiology technologist. She sought medical attention on January 21, 2009 and was diagnosed with bilateral carpal tunnel syndrome.

2. The claimant underwent an EMG/NCV study by Dr. Joseph on January 9, 2009. The findings were consistent with bilateral moderate to severe carpal tunnel syndrome, right worse than the left. An upper extremity radiculopathy was not demonstrated by needle examination.

3. The claimant sought medical attention at Logan Regional Medical Center on January 21, 2009. The claimant was complaining of bilateral wrist pain due to recent diagnosis of carpal tunnel syndrome.

4. By Order of February 3, 2009, the Claim Administrator advised that the 15-day requirement to determine compensability was being tolled as necessary information to make a decision regarding the compensability of the claim for Workers' Compensation benefits was lacking.

5. By Order of February 27, 2009 the claimant's application for benefits was denied as an investigation revealed the disability complained of was not due to an injury received in the course of and resulting from employment. The claimant protested the Order. The protest was acknowledged and a time frame established for the submission of evidence.

6. By undated letter received on July 9, 2009 the claimant requested that the claim be expedited. The claimant stated the pain in her arm was quickly becoming unbearable.

7. The employer requested that Dr. Hennessey perform a medical record review of the claim. By report of August 3, 2009, he reviewed the electrodiagnostic study performed by Dr. Joseph on January 9, 2009. Dr. Hennessey opined that the claimant did not have bilateral carpal tunnel syndrome and stated that carpal tunnel syndrome is causally related to risk factors that are not work related. The claimant is obese, a woman and middle-aged.

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8. The claimant was examined by Dr. Mukkamala on August 3, 2009 at the request of the employer. While the doctor diagnosed bilateral carpal tunnel syndrome, he concluded that this was not caused by her occupational activities. Dr. Mukkamala stated that the activities of an x-ray technician are not expected to cause carpal tunnel syndrome as it does not involve the degree of force or repetition necessary to cause the syndrome. Dr. Mukkamala stated the claimant's carpal tunnel syndrome was naturally occurring.

9. In her affidavit of August 6, 2009, the claimant opined that her carpal tunnel syndrome in both wrists was directly related to the functions she performed at work. The claimant stated that she is 5'5" and weighs approximately 200 pounds. She does not have hypothyroidism or diabetes although she did have gestational diabetes when she was pregnant in 2005-2006. She stated she had no hobbies or activities outside of her employment which would put as much strain or repetition motion on her arms as her job duties. Her pain had progressively gotten worse and was hindering her job performance and it was often difficult to assist her patients or position them due to the weakness and numbness in her hands and arms. The claimant stated it is affecting her home life as well as she is now awakened several times each night with pain and numbness and as a result she is often tired. The claimant outlined her duties as a radiology technologist including transportation of the patient, assisting patients to undress and dress, computer use, positioning and repositioning the x-ray tube, cleaning exam rooms and equipment, filing, etc. The claimant was told that without surgery to relieve the pain that it could affect her muscles and arms and she would have permanent loss of function.

10. A hearing was conducted in this matter on August 10, 2009. Evidence was presented but no testimony taken. Counsel presented arguments for their respective parties.

11. The employer submitted a closing argument on August 10, 2009 and renewed its motion to dismiss as untimely filed. The employer further argued the claimant had failed to carry her burden to establish that her carpal tunnel syndrome was caused by her employment. The substantial, reliable and probative evidence of record establishes that the claimant's carpal tunnel syndrome is a non-compensable condition. The claimant had submitted evidence indicating she suffers from carpal tunnel syndrome but no medical evidence that even speculated that this is related to her employment.

[REDACTED]

[REDACTED]

DISCUSSION:

This case is before the Office of Judges based on a protest to the Order regarding the compensability of the claim. An employee who receives an injury in the course of and as a result of his or her covered employment receives benefits. Code §23-4-1. An employee who is injured gradually by reason of duties of employment and becomes disabled is the recipient of a personal injury within the meaning of the West Virginia Workers' Compensation statute. Sansom v. Workers' Compensation Commissioner, 176 W.Va. 545, 346 S. E. 2d 63 (1986). The West Virginia Code provides that occupational diseases, other than occupational pneumoconiosis, be compensated as an "injury" or "personal injury" if "incurred in the course of and resulting from employment." W.Va. Code §23-4-1, sets forth six criteria for determining if a disease was incurred in the course of or resulted from the employment.

In the Sansom, *supra*, case, the employee worked on a conveyor line and repeatedly performed a sequence of movements throughout her workday whereby she developed tenosynovitis of the wrists. The court found that compensability depended upon three elements: (1) the claimant has incurred an injury known as carpal tunnel syndrome, characterized by the claimant's physician as a disease or injury, (2) the injury followed a repetitive use of the claimant's upper extremities resulting in symptoms that precluded the performance of the claimant's work duties, and (3) the malady resulted from the employment.

W.Va. Code §23-4-1g provides that the resolution of any issue shall be based on a weighing of all evidence pertaining to the issue and a finding that a preponderance of the evidence supports the chosen manner of resolution. The process of weighing evidence shall include, but not be limited to, an assessment of the relevance, credibility, materiality and reliability that the evidence possesses in the context of the issue presented. No issue may be resolved by allowing certain evidence to be dispositive simply because it is reliable and is most favorable to a party's interests or position. The resolution of issues in claims for compensation must be decided on the merits and not according to any principle that requires statutes governing workers' compensation to be liberally construed because they are remedial in nature. If, after weighing all of the evidence regarding an issue, there is a finding that an equal amount of evidentiary weight exists for each side, the resolution that is most consistent with the claimant's position will be adopted.

Preponderance of the evidence means proof that something is more likely so than not so. In other words, a preponderance of the evidence means such evidence, when considering and compared with opposing evidence, is more persuasive or convincing. Preponderance of the evidence may not be determined by merely counting the number of witnesses, reports, evaluations, or

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other items of evidence. Rather, it is determined by assessing the persuasiveness of the evidence including the opportunity for knowledge, information possessed, and manner of testifying or reporting.

The Claim Administrator, by Order of February 27, 2009, denied the claim for carpal tunnel syndrome as the disability complained of was not due to an injury received in the course of and resulting from the claimant's employment. The claimant requested to have the matter handled under the expedited process. The employer submitted motions to remove the claim from the expedited process, dismiss the protest as untimely filed and to cancel the expedited hearing. These motions were all denied by Order of July 31, 2009. At the expedited hearing on August 10, 2009, employer's counsel renewed the motions, which were again denied.

In support of her protest, the claimant submitted her affidavit wherein she stated she does not have hypothyroidism, diabetes, or hobbies that would put strain on or cause repetitive motion of her arms. She also noted that her pain has progressively worsened and she was having difficulty at work and home. She described her job duties as a radiology technologist. The claimant also submitted the report of Dr. Joseph who determined, following an EMG/NCV, that the claimant's findings were consistent with moderate to severe bilateral carpal tunnel syndrome, worse on the right than the left. Dr. Joseph did not articulate the etiology of the claimant's problem. Likewise, the Logan Regional Medical Center emergency physician record did not note the reason for the claimant's hand pain.

The employer submitted several medical reports, including the August 3, 2009 report from Dr. Hennessey wherein the doctor opined that there was insufficient evidence to establish the claimant's carpal tunnel syndrome was work related. There was a lack of direct and proximal temporal relationship of the onset of carpal tunnel syndrome to the onset of her gainful employment at [REDACTED]. He did acknowledge that claimant had medical risk factors for the development and progression of carpal tunnel syndrome, including her obesity. He noted that the claimant was 5'5" and 200 pounds. Dr. Mukkamala examined the claimant and reviewed her records, concluding that although she had evidence of bilateral carpal tunnel syndrome there was no basis to attribute this to her occupational activities. He cited the claimant's weight, noting that an increased body mass index is a significant risk factor for the development of carpal tunnel syndrome. He reviewed claimant's job description and her explanation of her occupational duties finding that her work did not involve the necessary degree of force or repetition to cause carpal tunnel syndrome.

[REDACTED]

[REDACTED]

During the hearing, counsel for claimant raised an issue concerning the consideration of the claimant's weight at 200 pounds by Dr. Hennessey and 243 pounds by Dr. Mukkamala. By her own admission, claimant is 5'5" tall and weighs no less than 200 pounds. An individual who is 5'5" with a weight of 200 pounds would have a body mass index, BMI, of 33.3. A BMI of 30 or greater is considered obese. Accordingly, even using the lower weight, the claimant's body habitus is still a risk factor for carpal tunnel syndrome.

Accordingly, the preponderance of the evidence presented supports the conclusion of the Claim Administrator to reject this claim. The claimant did not submit any medical evidence to support the position that her bilateral carpal tunnel syndrome was caused by her occupation. The employer noted that claimant has other factors that are more likely the causation and she did not submit any evidence to refute this. The Order of February 27, 2009 rejecting the claim should be affirmed.

CONCLUSIONS OF LAW:

The claimant has not established by a preponderance of the evidence that her bilateral carpal tunnel syndrome is work related.

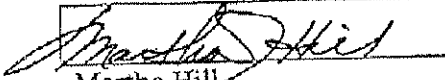
Accordingly, it is therefore ORDERED that the Claim Administrator's Order of February 27, 2009, be AFFIRMED.

[REDACTED]

APPEAL RIGHTS:

Under the provisions of W.Va. Code §23-5-12, any aggrieved party may file a written appeal within thirty (30) days after receipt of any decision or action of the Administrative Law Judge. The appeal shall be filed with the Board of Review at P.O. Box 2628, Charleston, WV, 25329.

DATE: August 25, 2009


Martha Hill
Administrative Law Judge

MJH:srp:lkc

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]