

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1995 MTWCC 42

WCC No. 9403-7024

SANDRA LEE HANSON

Petitioner

vs.

STATE COMPENSATION INSURANCE FUND

Respondent.

ORDER ON APPEAL

Summary: Claimant appeals from determination by the Department of Labor and Industry that she is not suffering from an occupational disease arising out of her employment as a personal care attendant.

Held: DOL determination affirmed where claimant has offered no evidence connecting her mild carpal tunnel condition to her employment as a personal care attendant. Indeed, the unrefuted opinion of the OD panel physician was that claimant does not have an occupational disease and was not placed at risk for developing carpal tunnel syndrome by her occupational activities as a personal care attendant.

Topics:

Benefits: Occupational Diseases. Where unrefuted opinion of the OD panel physician was that claimant does not have an occupational disease and was not placed at risk for developing carpal tunnel syndrome by her occupational activities as a personal care attendant, and claimant offered no other evidence linking her mild carpal tunnel condition to her employment, WCC affirms DOL order that claimant is not suffering from an occupational disease.

Causation: Medical Condition. Where unrefuted opinion of the OD panel physician was that claimant does not have an occupational disease and was not placed at risk for developing carpal tunnel syndrome by her occupational activities as a personal care attendant, and claimant offered no other evidence linking her

mild carpal tunnel condition to her employment, WCC affirms DOL order that claimant is not suffering from an occupational disease.

Occupational Disease: Causation. Where unrefuted opinion of the OD panel physician was that claimant does not have an occupational disease and was not placed at risk for developing carpal tunnel syndrome by her occupational activities as a personal care attendant, and claimant offered no other evidence linking her mild carpal tunnel condition to her employment, WCC affirms DOL order that claimant is not suffering from an occupational disease.

Medical Conditions (By Specific Condition): Carpal Tunnel Syndrome. Where unrefuted opinion of the OD panel physician was that claimant does not have an occupational disease and was not placed at risk for developing carpal tunnel syndrome by her occupational activities as a personal care attendant, and claimant offered no other evidence linking her mild carpal tunnel condition to her employment, WCC affirms DOL order that claimant is not suffering from an occupational disease.

This is an appeal from a finding by the Department of Labor and Industry (DLI) that appellant, Sandra Lee Hanson (claimant), "is not suffering from an occupational disease arising out of her employment with West Mont Home Management."

Procedural Background

Claimant suffers from carpal tunnel syndrome (CTS). She filed a claim against West Mont Home Management (West Mont), alleging that her CTS is an occupational disease and that West Mont's insurer, the State Compensation Insurance Fund (State Fund), is liable for her condition. It is not clear when claimant filed her claim for occupational disease benefits. The claim is not part of the DLI record and the hearing examiner's findings indicate only that it was "timely filed." (Finding 3.)

Claimant was referred to Dr. Ronald M. Peterson, a member of the Occupational Disease Panel, for evaluation. Dr. Peterson examined claimant on April 27, 1993. He confirmed that she suffers from CTS but concluded:

I do not feel the patient is suffering from an occupational disease. I see no evidence in her description of her job nor in the job description that would place her at risk for development of such a disease due to repetitive motion or prolonged stress on her upper extremities.

(See Speed Letter Dated 6/29/93 to Cathy Brown Kummer with Medical Attachments (DLI File).)

Based on Dr. Peterson's report the DLI made a preliminary finding that claimant is not entitled to occupational disease benefits. (*Id.*) Claimant did not request an examination by a second panel member. Instead, she requested a hearing.

A hearing was held on October 28, 1993, before a DLI hearing examiner. Claimant and her sister testified. The only medical information submitted was in the form of exhibits. Dr. Peterson's report, medical notes of Dr. Connie O'Connor (claimant's treating physician) and an EMG and nerve conduction report by Dr. Charles Anderson were admitted into evidence.

On February 22, 1994, the hearing examiner issued his Findings of Fact, Conclusions of Law and Order. He determined that claimant is not entitled to benefits under the Occupational Disease Act.

Facts

Claimant was employed by West Mont as a personal care attendant (PCA) from June 11, 1992 until February 3, 1993. Her work schedule varied from twenty-six (26) to thirty-six (36) hours per week.

As a PCA, claimant visited the homes of physically incapacitated persons and provided living assistance. Her work included lifting and moving of handicapped clients, buying and delivering groceries, and housework such as, vacuuming, washing dishes, laundry, cooking, scrubbing floors, and cleaning bathrooms. She transported clients, some of whom were wheelchair bound, to appointments. She also assisted clients with showering and bathing.

Following resignation of her West Mont employment, the claimant worked at State Nursery as a "dibbler," transplanting plants. She was laid off in July of 1993. (Finding 17.)

Claimant then went to work for the Helena Buttrey store in the deli. At the time of the DLI hearing, she was still employed by Buttrey. (Finding 18.)

Dr. O'Connor's medical records indicate that she examined claimant on November 9, 1992. (Ex. P-12.) At that time claimant was complaining of wrist and elbow pain in both arms. (*Id.*) Dr. O'Connor diagnosed CTS and referred claimant for nerve conduction studies. (*Id.*)

Nerve conduction studies were ultimately performed on February 8, 1993, by Dr. Charles B. Anderson. He reported that the studies "are suggestive of a very mild and/or very early median neuropathy at the right wrist." (Ex. P-2.) The study of the left wrist was normal. (*Id.*)

Neither Dr. O'Connor nor Dr. Anderson expressed any opinion regarding the etiology of claimant's carpal tunnel symptoms or their relationship to her occupation.

Standard of Review

Section 39-72-612(2), MCA, provides for a direct appeal to the Workers' Compensation Court from the DLI's final order in an occupational disease case. The section further provides:

- . . . The judge may overrule the department only on the basis that the department's determination is:
- (a) in violation of constitutional or statutory provisions;
 - (b) in excess of the statutory authority of the agency;
 - (c) made upon unlawful procedure;
 - (d) affected by other error of law;
 - (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
 - (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Under the clearly erroneous standard of subparagraph (e), the hearing examiner's findings of fact must be overturned on judicial review where they are "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." *State Compensation Mutual Insurance Fund v. Lee Rost Logging*, 252 Mont. 97, 102, 827 P.2d 85 (1992) (quoting section 2-4-704(2)(a)(v), MCA). The Court will not reweigh the evidence; the findings and conclusions of the fact finder will be upheld if they are supported by substantial credible evidence in the record. *Nelson v. EBI Orion Group*, 252 Mont. 286, 289, 829 P.2d 1 (1992). Conclusions of law, however, must be examined to determine if they are correct. *Steer, Inc. v. Department of Revenue*, 245 Mont. 470, 474-75, 803 P.2d 601 (1990).

Discussion

The claimant is appearing pro sé in this appeal, as she did in the proceedings below. In support of her appeal she has filed the following statement:

I, Sandra L. Hanson, feel that the state of Montana should pay my medical and doctor expenses for these reasons:

- 1.) Dr. Peterson stated that I have a mild case of carpal tunnel syndrome and he also states I have over used my hands and wrists which I feel is a pretty stupid statement,

because in order to support myself I have to use my hands and wrists.

2.) I also have to wear braces on my hands and wrists at night in order to keep working.

3.) I also experience weakness throughout my body because of this syndrome [sic]

4.) I also don't feel my examination with Dr. Peterson was not thorough.

Carpal Tunnel Syndrome is a sickness, that is ongoing and will never get any better.

/s/ Sandra L. Hanson

(Hanson Letter of December 27, 1994.)

Three sections of the Occupational Disease Act are implicated by claimant's appeal. Section 39-72-408, MCA, provides :

Proximate causation. Occupational diseases shall be deemed to arise out of the employment only if:

(1) there is a direct causal connection between the conditions under which the work is performed and the occupational disease;

(2) the disease can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;

(3) the disease can be fairly traced to the employment as the proximate cause;

(4) the disease does not come from a hazard to which workmen would have been equally exposed outside of the employment;

(5) the disease is incidental to the character of the business and not independent of the relation of employer and employee.

Section 39-72-706(1), MCA, governs cases where the claimant's disease is due to a combination of occupational and non-occupational factors, providing:

Aggravation. (1) If an occupational disease is aggravated by any other disease or infirmity not itself compensable or if disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated, or in any way

contributed to by an occupational disease, the compensation payable under this chapter must be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease as a causative factor bears to all the causes of such disability or death.

Section 39-72-303(1), MCA (1993), specifies which employer and insurer are liable for an occupational disease, providing:

(1) Where compensation is payable for an occupational disease, the only employer liable is the employer in whose employment the employee was last injuriously exposed to the hazard of the disease.

Under these sections, the fact that claimant may suffer from carpal tunnel syndrome is not sufficient to impose liability on the State Fund. Claimant must also show that her CTS arises from or was aggravated by her employment, §§ 39-72-408 and 39-72-706, MCA, and that her last injurious exposure occurred at West Mont. She has failed to do either. Dr. Peterson opined that claimant is **not** suffering from an occupational disease. After considering claimant's own description of her West Mont job and a job description for her position, he further concluded that her occupational activities did not place her at risk for developing CTS. His opinions were unrefuted.

Claimant's assertion that Dr. Peterson did not conduct a thorough examination is belied by the completeness of his report, including an extensive history.

The hearing examiner properly concluded that claimant is not suffering from an occupational disease which is in any way related to her West Mont employment.

ORDER

The February 22, 1994 Findings of Fact, Conclusions of Law, and Order of the Department of Labor and Industry are **affirmed**.

The Order herein is certified as final for purposes of appeal to the Montana Supreme Court pursuant to ARM 24.5.348.

DATED in Helena, Montana, this 2nd day of June, 1995.

(SEAL)

/s/ Mike McCarter

JUDGE

c: Ms. Sandra Lee Hanson - Certified Mail
Mr. Charles G. Adams
Ms. Melanie A. Symons