

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2006 MTWCC 3

WCC No. 2004-1213

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CHANNIN HEDRICK

Petitioner

vs.

MACO WORKERS' COMPENSATION TRUST

Respondent/Insurer.

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

*Appealed to Supreme Court 05/03/06*  
*Appeal Dismissed by Stipulation 10/12/06*

**Summary:** Petitioner petitioned to receive treatment for her carpal tunnel syndrome by a Washington state physician, and for disability benefits for periods of time she claims she was disabled.

**Held:** Petition to receive treatment for carpal tunnel syndrome is granted. Petition to receive disability benefits for periods of time Petitioner claims she was disabled is denied. Subject to Petitioner's treating physician's opinion regarding Petitioner's employability during her recovery from surgery, Petitioner may be entitled to disability benefits for the period of her recovery from surgery.

**Topics:**

**Medical Conditions: Carpal Tunnel Syndrome.** The Court granted surgery for Petitioner's carpal tunnel syndrome where various diagnostic studies showed conflicting results, Petitioner's initial treating physician opined that Petitioner may have bilateral carpal tunnel syndrome and ulnar neuropathy, an IME physician diagnosed median and ulnar neuropathy related to her employment, a third physician diagnosed Petitioner with carpal tunnel syndrome and cubital tunnel syndrome but eventually released Petitioner to return to work with no restrictions, and a fourth physician Petitioner sought

out after benefits were terminated recommended carpal tunnel surgery on the right hand.

**Benefits: Termination of Benefits: Return to Work.** Where Petitioner returns to work in a position not requiring the use of her injured hands, fails to seek other employment after she voluntarily quits her job and does not meet the requirements set forth in § 39-71-701, MCA (2001), Petitioner is not entitled to recover past disability benefits.

¶ 1 The trial in this matter was held on October 28, 2005, in Helena, Montana. Petitioner, Channin Hedrick, was present and acted *pro sé*. Respondent was represented by Mr. Norman H. Grosfield.

¶ 2 Exhibits: Exhibits 1 through 14 were admitted without objection.

¶ 3 Witnesses: Channin Hedrick and Bonnie Knopf were sworn and testified at trial.

¶ 4 Issues Presented: The Pretrial Order states the following contested issues of law:

¶ 4a Whether Petitioner is entitled to receive treatment for her claimed carpal tunnel syndrome condition by Dr. Donald Sebesta in the state of Washington.

¶ 4b Whether Petitioner is entitled to disability benefits for periods of time she claims she has been disabled.

(Pretrial Order at 2.)

### FINDINGS OF FACT

¶ 5 Petitioner, Channin Hedrick, is 34 years old. She resides in Connell, Washington. (Pretrial Order at 1, Ex. 1; Trial Test.)

¶ 6 Petitioner was a credible witness and the Court finds her testimony at trial credible.

¶ 7 Bonnie Knopf was a credible witness and the Court finds her testimony at trial credible.

¶ 8 Petitioner worked full time as a dispatcher for the Toole County Sheriff's office in Shelby, Montana, between May 1998 and July 31, 2002. She also worked part time for the Toole County Sheriff's office for two years prior to her full-time employment. (Ex. 1; Trial Test.)

¶ 9 Petitioner's duties as a dispatcher included using her hands and wrists to type into a dispatcher's log. (Ex 1.)

¶ 10 Petitioner initially treated with Charles D. Jennings, M.D., in Great Falls. Dr. Jennings initially opined that Petitioner may well have bilateral carpal tunnel syndrome and possibly ulnar neuropathy. Subsequent nerve conduction studies ordered by Dr. Jennings in May 2003, however, did not reveal significant problems although Dr. Jennings noted slightly more prolonged median distal latencies on the left side. On May 29, 2003, Dr. Jennings suggested night splinting of both wrists and vitamin B<sub>6</sub> supplements. Petitioner wore the splints while sleeping and took a B<sub>6</sub> vitamin as recommended. (Ex. 10; Trial Test.)

¶ 11 On June 6, 2003, Petitioner filed a First Report with Montana State Fund regarding injuries to her hands and wrists. In the report, she described having pain in both hands and wrists and also numbness in her fingertips. (Ex. 1.)

¶ 12 At Respondent's request, Petitioner was referred for an Independent Medical Examination (IME) through the Department of Labor and Industry. The IME was conducted on September 18, 2003, by Scott Van Linder, M.D., an orthopedic surgeon. Dr. Van Linder's IME revealed positive Tinel's testing bilaterally and positive Phalen's testing on the right. Dr. Van Linder concluded that Petitioner appeared to be suffering from a work-related condition that, more probably than not, was related to her employment with the Toole County Sheriff's office. (Trial Test.; Ex. 11.)

¶ 13 Dr. Van Linder opined in his IME that a diagnosis of both median and ulnar neuropathy was established and that Petitioner should come under the care of a hand surgery specialist for consideration of surgical decompression. (*Id.*)

¶ 14 On September 18, 2003, Respondent accepted liability for Petitioner's occupational disease claim and placed her on temporary total disability benefits. (Ex 5.)

¶ 15 Because Petitioner was living in Washington, Respondent retained Intracorp to provide medical management of Petitioner's claim in her area of residence. The case manager at Intracorp assigned to Petitioner's claim was Catherine Parker. (Trial Test.; Ex. 14.)

¶ 16 Ms. Parker referred Petitioner to Dr. Walter Hales at Tri-City Orthopedic Clinic in Richland, Washington. (Trial Test.; Ex. 14 at 1.)

¶ 17 Dr. Hales first treated Petitioner on December 4, 2003. In his initial examination, Dr. Hales noted that Petitioner's right "ulnar nerve clearly dislocates out of the cubital tunnel with elbow flexion . . . ." Dr. Hales' conclusion at this time was that Petitioner

[D]efinitely has carpal tunnel syndrome but appears to have some cubital tunnel syndrome. It is not clear which of these two problems is her major problem.

(Ex. 12 at 1.)

¶ 18 During a subsequent visit to Dr. Hales on December 19, 2003, he again noted dislocation of the ulnar nerve during physical examination and positive elbow flexion test bilaterally. (*Id.* at 11)

¶ 19 Although Petitioner continued to have symptoms, subsequent electrodiagnostic studies were ordered by Dr. Hales which were within normal limits. Therefore, Dr. Hales released Petitioner to return to work with no restrictions in February 2004. (Trial Test.; Ex. 12 at 9, 12.)

¶ 20 After being released by Dr. Hales, Petitioner continued to be symptomatic bilaterally. At the trial of this matter, Petitioner testified that she continues to experience pain, tingling, and numbness. (Trial Test.)

¶ 21 On March 25, 2004, Respondent terminated temporary total disability benefits. (Pretrial Order at 2.)

¶ 22 Petitioner was diagnosed with breast cancer in January 2005. She received twenty-four weeks of chemotherapy as part of her treatment program. (Trial Test.)

¶ 23 Because Petitioner continued to suffer symptoms after her benefits were terminated, she sought treatment at her own expense from Dr. Donald G. Sebesta, M.D., FACS. Dr. Sebesta is a general surgeon who performs carpal tunnel release surgery. Petitioner treated with Dr. Sebesta on April 26, 2005, after which he noted that Petitioner had a positive nerve conduction study on the right and normal findings on the left. Dr. Sebesta further noted, however, that Petitioner was definitely symptomatic on the left. Therefore, Dr. Sebesta recommended that Petitioner undergo a carpal tunnel release on the right and, if this relieved her symptoms, follow up with a release of the left as well. Dr. Sebesta indicated that this surgery should be postponed until Petitioner concluded her course of chemotherapy and radiation. (Trial Test.; Ex. 13.)

¶ 24 Dr. Sebesta's treatment note and recommendation was forwarded to Respondent and received by Respondent's counsel on May 16, 2005. Respondent did not follow up or seek clarification from Dr. Sebesta regarding his opinions and Petitioner had no further follow-up treatments with Dr. Sebesta because she lacked sufficient funds to pay for follow-up visits with Dr. Sebesta out of her own pocket. (*Id.*)

¶ 25 During the time that Petitioner has continued to be symptomatic of carpal tunnel syndrome, she had nevertheless been able to perform seasonal employment with Orv's

Potatoes. She did not utilize her typing skills in this position, however, and her carpal tunnel syndrome did not prevent her from working at Orv's Potatoes. Petitioner's employment at Orv's Potatoes was to function as a liaison between the head of the operation and the employees' manager. (Trial Test.)

¶ 26 Except for her work at Orv's Potatoes, Petitioner did not seek other employment after she left her position at the Toole County Sheriff's office. Petitioner's carpal tunnel syndrome did not prevent her from seeking employment. Rather, Petitioner's cancer diagnosis and necessary treatment precluded her from seeking additional employment beyond her work at Orv's Potatoes. (*Id.*)

### CONCLUSIONS OF LAW

¶ 27 The law in effect on an employee's last day of work governs the resolution of an occupational disease claim. *Hardgrove v. Transportation Ins. Co.*, 2004 MT 340, 324 Mont. 238, 103 P.3d 999. Petitioner's last day of work at the Toole County Sheriff's office was July 31, 2002. Therefore, the 2001 version of the Occupational Disease Act applies.

¶ 28 Petitioner bears the burden of proving by a preponderance of the evidence that the medical procedure she seeks is reasonable. See *Ricks v. Teslow Consol.*, 162 Mont. 469, 512 P.2d 1304 (1973); *Dumont v. Wickens Bros. Constr. Co.*, 183 Mont. 190, 598 P.2d 1099 (1979). Petitioner has met that burden. The most recent medical evidence is from Petitioner's treating physician, Dr. Sebesta. Dr. Sebesta has opined that Petitioner has a positive nerve conduction study on her right side and, although nerve conduction on the left is normal, she remains symptomatic on her left side. Dr. Sebesta has indicated that he would perform a carpal tunnel release on the right side and, if Petitioner obtains relief from this, he would probably proceed with a release on the left side as well. The medical evidence, including the IME report of Dr. Van Linder, is that Petitioner's condition results from her employment with the Toole County Sheriff's office. Accordingly, Petitioner may proceed with the medical treatment indicated by her treating physician, Dr. Sebesta, including bilateral surgery.

### JUDGMENT

¶ 29 This Court has jurisdiction over this matter pursuant to § 39-71-2905, MCA (2001).

¶ 30 Petitioner may obtain treatment for her carpal tunnel syndrome from Dr. Sebesta. This treatment may include bilateral surgery on Petitioner's wrists to relieve the symptoms of Petitioner's carpal tunnel syndrome. Montana Association of Counties Workers' Compensation Trust is liable for such treatment.

¶ 31 Petitioner is not entitled to recover past disability benefits. Petitioner was able to work after her employment with the Toole County Sheriff's office and does not meet the requirements set forth in § 39-71-701, MCA (2001).

¶ 32 Depending upon the medical evidence regarding Petitioner's employability while recovering from her surgery or surgeries, Petitioner may be eligible for disability benefits during the period of her recovery from carpal tunnel surgery.

¶ 33 This JUDGMENT is certified as final for purposes of appeal.

¶ 34 Any party to this dispute may have twenty days in which to request reconsideration from these FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT.

DATED in Helena, Montana, this 18<sup>th</sup> day of January, 2006.

(SEAL)

/s/ James Jeremiah Shea  
JUDGE

c: Ms. Channin Hedrick  
Mr. Norman H. Grosfield  
Submitted: October 28, 2005