

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

KELLY OWEN,)	
)	
Claimant,)	IC 2004-509258
)	
v.)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
MAGIC VALLEY REGIONAL)	AND RECOMMENDATION
MEDICAL CENTER,)	
)	
Employer,)	1/29/08
)	
and)	
)	
LIBERTY NORTHWEST INSURANCE)	
CORPORATION,)	
)	
Surety,)	
)	
Defendants.)	
_____)	

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor. Claimant represents herself pro se. Monte Whittier, of Boise, represents Defendant Employer, Magic Valley Regional Medical Center (Magic Valley), and Defendant Surety, Liberty Northwest Insurance Corporation. In lieu of a hearing, the parties stipulated to submit the matter on written exhibits and briefs. This matter came under advisement on September 19, 2007, and is now ready for decision.

ISSUES

As stipulated by the parties, the issues to be decided are:

1. Whether Claimant’s continuing bilateral hand condition is causally related to her employment with Magic Valley Regional Medical Center; and

2. Whether Claimant is entitled to any workers' compensation benefits for her alleged bilateral hand condition.

ARGUMENTS OF THE PARTIES

Claimant maintains that she is entitled to benefits for an occupational disease arising from her employment which continues to produce bilateral hand and wrist pain.

Defendants assert that Claimant has failed to provide medical evidence of a continuing compensable occupational disease, they have provided adequate medical evaluation and treatment for her hand condition, she has recovered with no permanent impairment, and is not entitled to any further benefits.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. Claimant's Exhibits A through I admitted by stipulation of the parties; and
2. Defendants' Exhibits A through F admitted by stipulation of the parties.

After having considered the above evidence, and the arguments of the parties, the Referee submits the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Claimant is 39 years old and right hand dominant. She graduated from high school and subsequently studied cosmetology and medical office management. She is an experienced transcriptionist.

2. Claimant has been employed since September 2003 by Magic Valley as a medical transcriptionist. Her compensation is determined by productivity and on average approximates \$17.50 per hour.

3. In October 2003, Claimant advised her supervisor, Kristen Neal, that the regular keyboard assigned to her by Magic Valley was causing pain in both of her hands. Neal ordered an ergonomic keyboard for Claimant.

4. On November 4, 2003, Claimant presented to Mark Spencer, M.D., who recorded her complaints of carpal tunnel-like symptoms at night. Upon examining her hands, he found no muscle wasting and no Tinel's sign. He assessed mild right carpal tunnel syndrome and provided Claimant a wrist splint which she wore at night. On November 24, 2003, Dr. Spencer examined Claimant again and assessed right and left carpal tunnel syndrome. He noted the first splint had helped Claimant's right wrist and prescribed a splint for her left wrist. The splints significantly helped Claimant's symptoms.

5. An ergonomic keyboard was finally received and available for Claimant's use at Magic Valley in approximately late November 2003.

6. Claimant's hands improved until approximately March 2004, when they worsened and began impacting her everyday life.

7. On April 28, 2004, Claimant presented to a Dr. Stagg with complaints of wrist and hand pain from typing. He prescribed anti-inflammatories and sought Surety's approval for nerve conduction testing

8. On June 9, 2004, Claimant filed her first Workers' Compensation Complaint in this case alleging pain in bilateral hand/wrists from repetitive motion.

9. On October 20, 2004, Claimant was examined by William Lenzi, M.D., at the Intermountain Hand Clinic in Boise, at Defendants' request. Dr. Lenzi noted Claimant's developing symptoms and diagnosed bilateral flexor tenosynovitis, left greater than right, due to her repetitive motion work for Magic Valley. Dr. Lenzi noted that Claimant's flexor

tenosynovitis was on the verge of an early carpal tunnel syndrome. He recommended wristlets, passive stretching exercises which he demonstrated to Claimant, and anti-inflammatory medication. He restricted Claimant from overtime work until her tendinitis was under control.

10. On March 11, 2005, after providing Claimant notice of intent to dismiss, the Commission dismissed her first Complaint for lack of prosecution.

11. On April 18, 2005, Dr. Spencer examined Claimant again. He noted that she had been working about three months as a full-time medical transcriptionist for Magic Valley, with a non-ergonomic keyboard when her hand symptoms commenced. Dr. Spencer assessed bilateral carpal tunnel syndrome secondary to her work.

12. On April 19, 2005, Claimant filed another Workers' Compensation Complaint alleging pain in bilateral hands/wrists from repetitive motion.

13. On April 25, 2005, Dr. Spencer wrote a letter recounting Claimant's symptoms of carpal tunnel syndrome in November 2003 which he attributed to her use of a non-ergonomic keyboard at her place of employment.

14. On May 23, 2005, Dr. Stagg responded to Defendants' inquiry by indicating he could not say whether Claimant's bilateral little finger tendonitis resulted from her work activities.

15. On January 18, 2006, Defendants accepted the claim and referred Claimant to an orthopedic surgeon in Twin Falls for evaluation for possible surgery or other treatment.

16. On February 6, 2006, Claimant presented to Mark Wright, M.D., at the Intermountain Orthopedic Clinic in Twin Falls. He noted that Claimant's presentation was confusing because she displayed some symptoms suggestive of carpal tunnel syndrome but others suggestive of cubital tunnel syndrome. Dr. Wright recommended EMG and nerve

conduction studies to further evaluate Claimant's condition. He gave Claimant a full return to work release pending completion of the diagnostic evaluations.

17. On May 5, 2006, Richard Hammond, M.D., performed bilateral EMG and median and ulnar nerve conduction studies which were normal.

18. On June 7, 2006, Dr. Wright examined Claimant again noting a very slightly positive Phalen's test. His impression was possible nerve entrapment syndrome without electrophysiologic evidence of damage. He restricted Claimant from repetitive gripping or twisting and directed her to take 10 minute breaks every hour while keyboarding. Dr. Wright requested a second opinion from a hand specialist in Boise.

19. On September 20, 2006, Dr. Lenzi examined Claimant again at Defendants' request. Dr. Lenzi specifically noted that Claimant had no sign of flexor tenosynovitis, hand arthritis, or thoracic outlet syndrome. The common clinical carpal tunnel and cubital tunnel diagnostic tests were negative. Dr. Lenzi expressly noted that Claimant's physical examination was normal. He recorded Claimant's complaints of neck and back pain which he opined would benefit from physical therapy but which he specifically noted were not related to any industrial injury. Dr. Lenzi found no impairment and recommended discharge from further medical care.

DISCUSSION AND FURTHER FINDINGS

20. The provisions of the Workers' Compensation Law are to be liberally construed in favor of the employee. Haldiman v. American Fine Foods, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990). However, the Commission is not required to construe facts liberally in favor of the worker when evidence is conflicting. Aldrich v. Lamb-Weston, Inc., 122 Idaho 361, 363, 834 P.2d 878, 880 (1992).

21. **Causation.** A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. Langley v. State, Industrial Special Indemnity Fund, 126 Idaho 781, 785, 890 P.2d 732, 736 (1995). Thus, if alleging an industrial accident, a claimant must prove not only that she was injured, but also that the injury was the result of an accident arising out of and in the course of employment. Seamans v. Maaco Auto Painting, 128 Idaho 747, 751, 918 P.2d 1192, 1196 (1996). If alleging an occupational disease, a claimant must demonstrate among other things that (1) she was afflicted by a disease; (2) that the disease was incurred in, or arose out of and in the course of her employment, and (3) that as a consequence of such disease, she became actually and totally incapacitated from performing her work in the last occupation in which she was injuriously exposed to the hazards of such disease. Idaho Code §§ 72-102(21) and 72-437.

22. Claimant herein asserts continuing bilateral pain in her hands and wrists. She does not allege a specific industrial accident, rather her allegations denote a potential, although unnamed, occupational disease.

23. The record contains medical evidence of a possible occupational disease of carpal tunnel syndrome from late 2003 through early 2005. Claimant was treated or seen by Drs. Spencer, Stagg, Wright, and Lenzi who prescribed various anti-inflammatory medications, periodic rest breaks, and passive stretching exercises. The weight of the medical records indicates that after approximately May 2005, Claimant's bilateral hand condition improved and that by September 2006, Claimant's examination was normal. There is no medical evidence that Claimant's ongoing hand symptoms are caused by her work for Magic Valley.

24. Claimant has failed to prove a continuing bilateral hand condition that could be a compensable occupational disease. She has failed to prove that her continuing bilateral hand condition is causally related to her employment with Magic Valley.

25. **Additional benefits.** Having failed to prove that her continuing bilateral hand condition is causally related to her work at Magic Valley, Claimant has failed to prove her entitled to any additional workers' compensation benefits.

CONCLUSIONS OF LAW

1. Claimant has not proven that her continuing bilateral hand condition is causally related to her employment with Magic Valley Regional Medical Center.

2. Claimant has not proven she is entitled to any additional workers' compensation benefits for her alleged bilateral hand condition.

RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Referee recommends that the Commission adopt such findings and conclusion as its own and issue an appropriate final order.

DATED this 29 day of January 2008.

INDUSTRIAL COMMISSION

/s/ _____
Alan Reed Taylor, Referee

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 29 day of January, 2008, a true and correct copy of **Findings of Fact, Conclusions of Law, and Recommendation** was served by regular United States Mail upon each of the following:

KELLY S OWEN
PO BOX 131
HAGERMAN ID 83332

MONTE R WHITTIER
PO BOX 6358
BOISE ID 83707-6358

jc_____

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KELLY OWEN,)
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 Claimant,) **IC 2004-509258**
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 v.)
)
 MAGIC VALLEY REGIONAL)
 MEDICAL CENTER,)
)
 Employer,)
) **ORDER**
)
 LIBERTY NORTHWEST INSURANCE)
 CORPORATION,)
) 1/29/08
 Surety,)
)
 Defendants.)
 _____)

Pursuant to Idaho Code § 72-717, Referee Alan Reed Taylor submitted the record in the above-entitled matter, together with her proposed findings of fact and conclusions of law to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED That:

1. Claimant has not proven that her continuing bilateral hand condition is causally related to her employment with Magic Valley Regional Medical Center.
2. Claimant has not proven she is entitled to any additional workers' compensation benefits for her alleged bilateral hand condition.

3. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all issues adjudicated.

DATED this 29 day of January, 2008.

INDUSTRIAL COMMISSION

/s/ _____
James F. Kile, Chairman

/s/ _____
R. D. Maynard, Commissioner

/s/ _____
Thomas E. Limbaugh, Commissioner

ATTEST:

/s/ _____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 29 day of January, 2008, a true and correct copy of the foregoing **Order** was served by regular United States Mail upon each of the following persons:

KELLY OWEN
P O BOX 131
HAGERMAN ID 83332

MONTE R WHITTIER
LAW OFFICES OF HARMON, WHITTIER & DAY
P O BOX 7507
BOISE ID 83707

jkc

/s/ _____