

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

BANDIE M. HARRISON,)
)
 Claimant,)
)
 v.)
)
 ATK ALLIANT TECHSYSTEMS /)
 AMMUNITION ACCESSORIES,)
)
 Employer,)
)
 and)
)
 INSURANCE COMPANY OF THE)
 STATE OF PENNSYLVANIA,)
)
 Surety,)
)
 Defendants.)
 _____)

IC 2006-009634
IC 2007-035048

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

Filed: August 5, 2009

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Alan Taylor, who conducted a hearing in Lewiston on December 15, 2008. Claimant, Bandie M. Harrison, was present in person and represented by Michael Kessinger, of Lewiston. Defendant Employer, ATK Alliant Techsystems/Ammunition Accessories (ATK), and Defendant Surety, Insurance Company of the State of Pennsylvania, were represented by Bentley G. Stromberg, of Lewiston. The parties presented oral and documentary evidence. Post-hearing depositions were taken and briefs were later submitted. The matter came under advisement on May 6, 2009.

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ISSUES

The issues to be decided are:

1. Whether the condition for which Claimant seeks benefits was caused by the industrial accident or occupational disease.
2. Whether and to what extent Claimant is entitled to additional medical care.

CONTENTIONS OF THE PARTIES

Claimant asserts that her ongoing bilateral hand symptoms are caused by her work injuries at ATK and that she is entitled to additional medical treatment, including surgery, for her complaints. Defendants maintain that Claimant has received adequate medical treatment, is magnifying her symptoms and is not entitled to further medical treatment.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission's legal file;
2. The pre-hearing deposition of Claimant taken on November 11, 2008;
3. The testimony of Claimant taken at the December 15, 2008, hearing;
4. Claimant's Exhibits A through P admitted at the hearing;
5. Defendants' Exhibits 1 through 21 admitted at the hearing;
6. The post-hearing deposition of John M. McNulty, M.D., taken by Claimant on January 6, 2009; and
7. The post-hearing deposition of Rodde Cox, M.D., taken by Defendants on January 12, 2009.

All objections posed during the deposition of Dr. McNulty are overruled. All objections posed during the deposition of Dr. Cox are sustained. After having considered the above evidence and the arguments of the parties, the Referee submits the following findings of fact and conclusions of law for review by the Commission.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION - 2

FINDINGS OF FACT

1. Claimant was born in 1976 and was 32 years old at the time of the hearing. She resided in the Lewiston-Clarkston area from 2006 through the time of hearing. Claimant is right hand dominant.

2. Claimant graduated from high school in 1995. She attended Lewis & Clark State College and Spokane Community College. Prior to August 11, 2006, Claimant had no hand or wrist injuries or limitations.

3. In September 2005, Claimant started working at ATK assembling rimfire ammunition at \$10.00 per hour. Her duties included all aspects of ammunition assembly and packaging. She rotated between several assembly stations and frequently lifted objects ranging from tiny cases to trays weighing from five to 40 pounds. She lifted trays approximately every 10 minutes and lifted a collection of trays weighing 40 to 50 pounds every five to seven minutes. By August 2006, she was earning nearly \$14.00 per hour and enjoyed full benefits. She began with 10-hour shifts but later increased to 12-hour shifts. Claimant liked her job.

4. On August 11, 2006, Claimant was at work flipping lead plates of ammunition weighing five to 10 pounds when her left wrist “snapped” and she felt sharp pains from her wrist up into her arm and neck. She tried to keep working for several minutes, but the pain continued to such a degree that she dropped ammunition components. She stopped working and immediately reported the injury to her supervisor. Claimant’s supervisor sent her to Valley Medical Center, where Claimant was treated by Glen Jefferson, M.D. He diagnosed a sprain, told Claimant to take Aleve, and took her off work for approximately one week. Her left wrist pain improved and she returned to work. However, her left wrist began to worsen in October.

5. On October 25, 2006, Claimant was at work flipping plates of ammunition when she felt both of her wrists “snap” and experienced severe bilateral pain in her wrists shooting from her fingers up her arms and into her neck. Claimant immediately told her supervisor, who

sent her to Valley Medical where she was examined by William England, M.D. Dr. England diagnosed bilateral carpal tunnel syndrome, recommended Aleve and wrist splints, restricted Claimant to light-duty work, and referred her to Steven Ozeran, M.D.

6. Nerve conduction studies were interpreted as normal.

7. On November 28, 2006, Dr. Ozeran examined Claimant and diagnosed bilateral carpal tunnel syndrome and de Quervain's syndrome. He encouraged home exercises which Claimant has regularly performed. Dr. Ozeran administered cortisone injections which provided only a measure of temporary relief.

8. On January 23, 2007, Dr. Ozeran performed a surgical release of the right first and third dorsal compartments. Claimant's symptoms improved.

9. In March 2007, Claimant returned to work at ATK where she performed light-duty office work for a week and noted that her hands had improved. Claimant was then reassigned to inspect ammunition, which required her to flip plates of ammunition. She was only able to tolerate this work for slightly more than an hour before the onset of severe bilateral hand and wrist pain forced her to stop. ATK terminated her employment when she was unable to resume her duties.

10. Claimant sought other employment and, at the time of the hearing, was working full-time for Amplicon processing DNA replications. Her work at Amplicon requires bilateral dexterity but does not require her to lift more than approximately three pounds. Claimant does not anticipate remaining at Amplicon long-term because her duties there increase her hand pain. She notes increasing hand and wrist pain with activity. Claimant also experiences recurring pain and tingling in both hands and often is unable to sleep because of night-time hand and wrist pain.

11. Claimant last saw Dr. Ozeran in September 2007, and he recommended surgery. Claimant desires additional surgery if her doctors believe it will help her condition.

12. Having reviewed the evidence and observed Claimant at hearing, the Referee finds that Claimant is generally a credible witness.

DISCUSSION AND FURTHER FINDINGS

13. 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). The humane purposes which it serves leave no room for narrow, technical construction. Ogden v. Thompson, 128 Idaho 87, 88, 910 P.2d 759, 760 (1996). Facts, however, need not be construed 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).

14. **Causation.** The first issue is whether the condition for which Claimant seeks benefits was caused by the industrial accident or occupational disease. Defendants have acknowledged Claimant's injuries at ATK on August 11 and October 25, 2006, however they dispute that these injuries caused her present condition.

15. A claimant must prove not only that he or she suffered an injury, 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). Proof of a possible causal link is not sufficient to satisfy this burden. Beardsley v. Idaho Forest Industries, 127 Idaho 404, 406, 901 P.2d 511, 513 (1995). 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). "Probable" is defined as "having more evidence for than against." Fisher v. Bunker Hill Company, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974). Magic words are not necessary to show a doctor's opinion is held to a reasonable degree of medical probability, only plain and unequivocal testimony conveying a conviction that events are causally related. See, Jensen v. City of Pocatello, 135 Idaho 406, 412-13, 18 P.3d 211, 217 (2001).

16. In the present case, Dr. England examined and treated Claimant from October 2006 through at least March 2007. He diagnosed bilateral carpal tunnel syndrome caused by

Claimant's work at ATK. Dr. Ozeran examined and treated Claimant from November 2006 through 2007. He diagnosed bilateral carpal tunnel syndrome, right-sided de Quervain's tenosynovitis, and mild intersection syndrome caused by Claimant's work at ATK. James Brinkman, M.D., examined Claimant on May 3, 2007, at Defendants' request. He diagnosed de Quervain's syndrome and intersection syndrome bilaterally, right ulnar entrapment third compartment, and left elbow ulnar neuropathy, all related to Claimant's work at ATK. John McNulty, M.D., examined Claimant on May 6, 2008. He diagnosed bilateral de Quervain's tenosynovitis, intersection syndrome, and bilateral carpal tunnel syndrome, all related to Claimant's work at ATK. Rodde Cox, M.D., examined Claimant on September 15, 2008, at Defendants' request. Dr. Cox agreed with Drs. Ozeran, Brinkman, and England that Claimant injured her left wrist at ATK. Dr. Cox declined to address the causation of Claimant's right wrist condition because he lacked medical records pertaining to her right wrist injury.

17. All of the medical practitioners in this case who have offered opinions as to the causation of Claimant's bilateral wrist conditions have concluded that Claimant's bilateral wrist conditions are related to her work at ATK. Claimant has proven that the conditions for which she seeks benefits were caused by her work at ATK.

18. **Additional medical care.** The more difficult issue is whether and to what extent Claimant is entitled to additional medical care for her bilateral wrist condition.

19. Idaho Code § 72-432(1) requires that an employer shall provide for an injured employee such reasonable medical, surgical or other attendance or treatment, nurse and hospital service, medicines, crutches, and apparatus, as may be reasonably required by the employee's physician or needed immediately after an injury or manifestation of an occupational disease, and for a reasonable time thereafter. If the employer fails to provide the same, the injured employee may do so at the expense of the employer. Idaho Code § 72-432(1) obligates an employer to provide treatment if the employee's physician requires the treatment and if the treatment is

reasonable. Sprague v. Caldwell Transportation, Inc., 116 Idaho 720, 779 P.2d 395 (1989). Of course, the employer is only obligated to provide medical treatment necessitated by the industrial accident. The employer is not responsible for medical treatment not related to the industrial accident. Williamson v. Whitman Corp./Pet, Inc., 130 Idaho 602, 944 P.2d 1365 (1997).

20. In the present case, Claimant has performed home exercises as prescribed and sought employment with reduced physical demands. However, she continues symptomatic. The medical practitioners have offered conflicting opinions regarding appropriate medical treatment.

21. Dr. Cox has opined that no further surgery is indicated. He noted that all three of Claimant's nerve conduction tests produced normal results. He also noted significant variation in Claimant's grip strength testing results and reported that his examination of Claimant produced negative Tinel's and Phalen's test results. He reported no clinical evidence of carpal tunnel syndrome. Dr. Cox testified that he would never recommend carpal tunnel release absent abnormal nerve conduction test results.

22. Dr. Ozeran has opined that further surgery is warranted. Dr. Ozeran has noted clinical symptoms of carpal tunnel syndrome, including positive Tinel's sign at both carpal tunnels and both cubital tunnels and strongly positive Finkelstein's test. He concluded that Claimant has clinical symptoms of right-sided de Quervain's tenosynovitis and mild to moderate bilateral carpal tunnel syndrome. In September 2007, Dr. Ozeran noted that Claimant still had clinical evidence of carpal tunnel syndrome and would likely require bilateral carpal tunnel surgery and possibly bilateral releases for her de Quervain's tenosynovitis if she continued her work.

23. Dr. Brinkman has opined that further surgery is warranted. He examined Claimant on May 3, 2007, at Defendants' request. Dr. Brinkman found that Claimant had not reached maximum medical improvement and, if she had not improved in four weeks, should undergo surgical exploration of the first dorsal compartment or possible third compartment ulnar release of the right wrist. Dr. McNulty opined that such surgery would be reasonable.

24. Dr. McNulty examined Claimant on May 6, 2008, and noted her significant bilateral upper extremity dysfunction. He noted that her physical exam findings are strongly suggestive of carpal tunnel syndrome and recommended unilateral right carpal tunnel release. If that was successful, he recommended left carpal tunnel release surgery also. On May 22, 2008, Dr. Ozeran agreed with Dr. McNulty's IME findings. Dr. McNulty testified in his deposition that Claimant showed clinical signs of carpal tunnel syndrome, including positive carpal compression testing and positive Phalen's testing. Dr. McNulty noted that the medical literature documents that, although uncommon, some individuals with carpal tunnel syndrome produce normal nerve conduction test results. He testified that in his own practice of performing 30-40 carpal tunnel release surgeries annually, he sees a patient approximately every year or less with normal nerve conduction test results whose clinical examination demonstrates carpal tunnel syndrome and who is benefited by carpal tunnel release.

25. Defendants note that Claimant has produced normal nerve conduction test results on a least three different occasions and that Dr. Cox would never recommend carpal tunnel release surgery for a patient with normal nerve conduction results. Defendants also assert that Claimant has shown inconsistency in grip strength testing at different times by different practitioners and that this inconsistency, combined with her normal nerve conduction studies, indicates that her complaints are not genuine. While some variability in grip strength has been recorded by some practitioners over time, the Functional Capacity Exam performed October 28, 2008, concluded that Claimant demonstrated consistent performance with grip, pushing, and pulling tests and that her performance was consistent with limitations due to right more than left wrist and hand restriction. Furthermore, Dr. McNulty expressly testified that he had seen multiple cases over the years of individuals with normal nerve conduction test results who demonstrated clinical signs of carpal tunnel syndrome and whose carpal tunnel symptoms were relieved by carpal tunnel surgery.

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of August, 2009, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

MICHAEL T KESSINGER
PO BOX 287
LEWISTON ID 83501

BENTLEY G STROMBERG
PO BOX 1510
LEWISTON ID 83501

sc

_____/s/_____

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

DATED this 5th day of August, 2009.

INDUSTRIAL COMMISSION

/s/
R.D. Maynard, Chairman

/s/
Thomas E. Limbaugh, Commissioner

Unavailable for Signature
Thomas P. Baskin, Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of August, 2009, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

MICHAEL T KESSINGER
PO BOX 287
LEWISTON ID 83501

BENTLEY G STROMBERG
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/s/