

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

PENNY WEYMILLER,

Claimant,

v.

LOCKHEED IDAHO TECHNOLOGIES,

Employer,

and

EMPLOYERS INSURANCE OF WAUSAU,

Surety,

Defendants.

IC 2000-019910

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

Filed February 23, 2016

INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee LaDawn Marsters, who conducted a hearing in Idaho Falls on June 29, 2015. Claimant, Penny Weymiller, was present and represented herself *pro se*. Lea L. Kerr, of Boise, represented Employer Lockheed Idaho Technologies (“Lockheed”) and Surety Employers Insurance of Wausau. The parties presented oral and documentary evidence at the hearing. Claimant noticed but did not take the post-hearing deposition of her treating physician, Dr. Thurman. Following the hearing Referee Marsters left the Commission and the matter was reassigned to Referee John C. Hummel. The matter came under advisement on January 27, 2016.

ISSUES

The issues noticed for hearing were as follows:

1. Whether Claimant has complied with the notice limitations set forth in Idaho Code §§ 72-701 through 72-706;

2. Whether Claimant sustained an injury from an accident arising out of and in the course of employment; and

3. Whether and to what extent Claimant is entitled to further medical care.

The parties did not argue the first two issues in their post-hearing briefs, nor do those issues appear to be dispositive of this matter. Therefore, the sole issue to be decided is Claimant's entitlement to further medical care.

CONTENTIONS OF THE PARTIES

This case originated with Claimant's 1994 report of an occupational disease, bilateral carpal tunnel syndrome ("CTS"), which identified her workplace exposure as beginning in 1991. Surety denied the initial claim. After Claimant filed another claim report in 2000, Surety re-evaluated and reversed its previous denial. Thereafter Claimant received various allowed medical treatments for CTS, including prescription pain medications, wrist braces, and open left CTS release surgery performed on June 6, 2007. Claimant's treating physician released her to return to work without restrictions on September 20, 2007. Surety then closed the claim. Thereafter, Claimant did not seek medical treatment for her CTS again until May 2012. Claimant now seeks compensability of additional medical treatment for her CTS in the form of doctor visits, new wrist braces and pain medication.

Claimant argues that her current need for medical treatment is reasonable and causally-related to the original workplace exposure to conditions that caused her CTS beginning in 1991. Defendants argue that Claimant is not entitled to further medical treatment for CTS because she has not produced any medical evidence demonstrating that the current need for medical treatment is related to the accepted condition.

EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The Industrial Commission legal file;
2. Claimant's Exhibits A through C, admitted at the hearing;
3. Defendants' Exhibits 1 through 3 and 5 through 8, admitted at the hearing; and
4. The testimony of Claimant and Leslie Soderquist taken at the hearing.

After having considered the above evidence and the arguments of the parties, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

FINDINGS OF FACT

1. Claimant was 51 years old and resided in Idaho Falls at the time of hearing.
2. Claimant began working as an environmental scientist for EG&G, a contractor at the Idaho National Engineering Laboratory ("INL"), in or about October 1989. Through 2001 she continued to work for a series of successor contractors at the INL, including Lockheed. Her work for these INL contractors involved environmental compliance and waste disposal management.
3. Although she had brief periods of unemployment beginning in 2001 when she was laid off at the INL site, Ex. A:6, Claimant continued to work full-time or near full-time in environmental compliance and related fields in the Idaho Falls area through the date of the hearing. Her employers since 2002 included the following: Portage Environmental (2002 – 2007); Idaho Falls School District 9 (2007 – 2011); and Shoshone Bannock Tribes (2012 through the date of the hearing.) Ex. 7:70,74,84.
4. In the course of performing environmental compliance and waste disposal management work at the INL site, Claimant engaged in a significant amount of data entry in

databases to document the disposal of waste and chemicals. She attributes her original exposure to conditions which caused her CTS to computer keyboarding while performing data entry for EG&G in 1991. Tr., 13:14–15; Ex. B:2. Claimant’s supervisor at EG&G, Leslie Soderquist, recalls that Claimant began complaining of pain in her wrists from keyboarding at work in 1991. *Id.*, 47:13–21.

5. On July 28, 1994, Claimant filed her initial Notice of Injury and Claim for Benefits. She reported the date of injury as “since 1991” and stated that her “wrist became sore while doing data entry.” Ex. B:2. Surety denied compensability of the claim. *Id.* at 3. The record contains no evidence concerning the basis for Surety’s denial.

6. In or about 2000 Claimant was working for Lockheed, a successor contractor at the INL site, which was also insured for workers compensation through Defendant Surety. On March 1, 2000, she filed a Worker’s Compensation Claim Report in which she alleged in pertinent part as follows: “Wrist began bothering me in 1991. Turned into Workmen’s [sic] Comp in 1994... Diagnosed as carpal tunnel by neurologist in 1995. This is a chronic problem since 1991. My wrists and hand begin aching within 5 minutes of beginning to work on computer. I have been wearing wrist braces since 1991.” Ex. 1:1.

7. Surety re-evaluated and accepted the claim. On May 30, 2000, Bradley J. Street, a Claims Examiner with Surety, informed Claimant by letter in pertinent part as follows:

We have re-evaluated this claim which was originally denied and have now accepted your bi-lat. carpal tunnel syndrome as being related to your work and originally started in 1991. We have reversed our decision based on my interview with you earlier this year in which you stated that you first developed symptoms of carpal tunnel syndrome at work in 1991 and that those symptoms have always been present since 1991.

Ex. B:3.

8. Following Surety's acceptance of the claim, Dr. William Belk, M.D., of the INL Occupational Medicine Program, referred Claimant to Dr. R. Timothy Thurman, M.D., an Idaho Falls hand surgeon, for evaluation. Ex. A:1.¹

9. Dr. Thurman first saw Claimant in an office consultation on November 14, 2000. Noting that recent electro-diagnostic studies demonstrated the absence of radiculopathy or nerve compression in either extremity, Dr. Thurman recorded his impression of Claimant's condition as bilateral wrist pain, related to activity. He noted that Claimant did not have the "classic history of median nerve compression," but speculated that she may be in a category of patients who have normal nerve studies yet nevertheless have CTS. Dr. Thurman administered a steroid injection into Claimant's right wrist. He noted that a diagnosis of median nerve compression would be indicated if, following the steroid injection, Claimant's symptoms reduced, even on a temporary basis. He recommended that Claimant obtain wrist radiographs. Ex. A:1-3.

10. Dr. Thurman next evaluated Claimant on January 10, 2001. He reviewed her bilateral wrist radiographs and found no evidence of acute changes or intercarpal aberrations. He noted that Claimant obtained temporary relief from the steroid injection into her right carpal tunnel, but that her symptoms progressively returned. Dr. Thurman recorded his impression that Claimant had median nerve compression at the carpal tunnel level, although the most recent nerve conduction studies showed no abnormalities. He discussed with Claimant treatment options that included repeating the steroid injection and undergoing carpal tunnel release surgery. Claimant was not interested in surgical intervention at that time. Ex. A:7. Claimant also chose not to receive another steroid shot; she testified that "I refused to get a second steroid shot

¹ Prior to her care by Dr. Thurman, from May 24, 1999 until August 16, 2000, Claimant received medical care and evaluations related to her CTS from the INL Occupational Medicine Program. Ex. 8:87-106.

because it is incredibly painful, and they will only give you two anyways, so for two weeks' relief, it wasn't worth it." Tr., 16:7-10.

11. Claimant next consulted with Dr. Thurman on October 24, 2002. He reported her complaint as recurrent symptoms in both upper extremities and a new symptom in her right lateral epicondyle. In a letter to Surety on that date he recommended an ergonomic workstation because, following her layoff from the INL site, Claimant was working for a new employer [Portage Environmental] where ergonomic equipment was not available to her. Ex. A:8.

12. On January 26, 2005, Claimant returned to Dr. Thurman to request prescriptions for bilateral wrist braces. Claimant complained of reoccurring right and left upper extremity symptoms which Dr. Thurman found to be "very consistent" with CTS. Claimant did not wish to pursue additional evaluation or interventions other than wrist braces. Dr. Thurman was concerned about irreversible median nerve damage, given Claimant's ongoing symptoms. He again noted that her positive response to the steroid injection placed her into the category of patients with normal nerve studies but who nevertheless have CTS. He wrote a prescription for new wrist braces as requested. Ex. A:9.

13. Claimant next consulted with Dr. Thurman on February 13, 2007. Her complaint was of "persistent aching and intermittent paresthesias involving both the right and left upper extremities." Dr. Thurman again noted that Claimant's favorable response to steroid injection indicated that she was a good candidate for carpal tunnel decompression surgery. He opined that she would likely require carpal tunnel decompression in both upper extremities. He forwarded this information to Surety with a recommendation and request for staged carpal tunnel release surgery. Ex. A:11-12.

14. On March 6, 2007, Claimant returned to Dr. Thurman with continuing complaints of aching and pain in both upper extremities. He noted that authorization for carpal tunnel surgery was still pending with Surety. He released Claimant to return to work at a maximum of twenty-five hours per week, pending surgery, and prescribed Darvocet to be taken at night to assist with sleep due to pain. Ex. A:13.

15. Claimant's next office consultation with Dr. Thurman was on April 17, 2007. She reported consistent symptoms as in past visits that Dr. Thurman found indicative of bilateral CTS. Claimant continued to wear wrist braces at night, work under a twenty-five hour per week restriction, and take Darvocet to help her sleep. Dr. Thurman's office contacted Surety to inquire regarding the status of her claim and the pending request for approval of carpal tunnel release surgery. Surety indicated that the claim was still under file review. Ex. A:14. Dr. Thurman renewed Claimant's work restriction of twenty-five hours per week and a prescription for Darvocet. He also recommended that she continue to use braces as an assistive device. Ex. 2:4.

16. Having received approval from Surety for surgery, Dr. Thurman performed open left carpal tunnel release surgery on Claimant on June 6, 2007. Ex.A:15-16.

17. On June 21, 2007, Dr. Thurman evaluated Claimant's post-operative recovery. He observed that her surgical wound was healing without complication. Claimant reported that she had "quite a bit of pain" during the week post-surgery. Dr. Thurman noted that her preoperative numbness and tingling had resolved. Ex. A:17.

18. In a one-month follow-up evaluation to surgery on July 3, 2007, Dr. Thurman noted that Claimant had recently returned to work on six hour shifts. She reported some left thumb discomfort but denied numbness or tingling. Her surgical wound was healing without

complication. Her digital range of motion was full. Dr. Thurman ordered physical therapy two times per week for three weeks for palmar desensitization and gradual strengthening. Ex. A:18.

19. Dr. Thurman next evaluated Claimant on July 24, 2007. He noted that she complained of pain in her palm but indicated that physical therapy was helping. Her digital range of motion was full. There was no significant edema of the digits or hand. Dr. Thurman prescribed Elavil to help Claimant with sleep and pain. He recommended continuation of physical therapy and completed a work release continuing previous restrictions. Ex. A:19.

20. Dr. Thurman noted on the next office visit with Claimant on August 21, 2007 that she reported slow improvement regarding discomfort in her left hand following the surgery. Claimant told Dr. Thurman that she would be starting a new job (at the Idaho Falls School District 9) soon requiring much less computer work. The surgical wound continued to heal without complication and her range of motion appeared normal. He continued Claimant's previous work restriction of six hours per shift. Ex. A:20.

21. Claimant saw Dr. Thurman again on September 20, 2007. She reported the absence of paresthesias in her left hand for approximately one month's duration. He noted that ergonomic workstation modifications had been made at her new job site. Dr. Thurman released Claimant to return to work without restrictions and anticipated that she would reach maximum medical improvement in four weeks at her next scheduled follow-up appointment. Ex. 2:14. In a report to Surety on the same date, he stated his prognosis for Claimant's left CTS as "excellent" and that no further treatment was necessary. He anticipated no permanent restrictions. He commented that Claimant was "now in new job with new company – doing well." Ex. 2:15.

22. Claimant's next scheduled follow-up visit with Dr. Thurman did not occur. She explains that "I showed up, but I was late and Dr. Thurman couldn't see me." Tr., 29:1–2.

Claimant cannot recall clearly whether she attempted to reschedule an appointment; nevertheless she explains that “it just didn’t happen.” Tr., 29:6-7.

23. From September 20, 2007 until Claimant’s next office visit with Dr. Thurman on October 25, 2012, Claimant did not seek treatment with any physicians for symptoms related to her CTS. Tr., 31:1–6. During this period she did not have any prescription medications for pain related to CTS; she relied on over-the-counter Ibuprofen to treat her pain. Tr., 31:14–21. She also continued to wear wrist braces at night and during the day. *Id.*, 14:12–14; 30:18–19.

24. Claimant explains the reason for the five-year gap in medical treatment for her CTS by physicians as follows:

Well, when I go see Dr. Thurman, there is nothing he can do except – it’s not like he can treat me, except for prescription medicine and wrist braces. So the idea that I’m going to take sick leave or vacation time or whatever I need to do and spend time and expense – your [Surety’s] expense going back to see Dr. Thurman to say that you have bilateral carpal tunnel. I don’t need anybody to tell me that. I know that.

Id., 29:14–21.

25. Claimant asserts that her left carpal tunnel release surgery was “not successful” because she continued to need wrist braces for both extremities. *Id.*, 15:5-11. She explains her decision not to seek right carpal tunnel release surgery as follows: “I’m a right-handed dominant person...So I decided I would have my left hand done first to see how I did. At this point in time, I wouldn’t even consider having a carpal tunnel on my right hand. And maybe in the future they will make some huge medical strides, but at this time, from what I know today, I would not do it.” *Id.*, 17:8; 14-19.

26. In or about May 2012, Claimant sought to return to treatment with Dr. Thurman. Ex. 5:64. Because of the significant gap in treatment, Surety investigated the claim to determine

authorization. Ex. 5. Surety authorized Claimant to return to Dr. Thurman for a follow-up appointment to determine causality. Ex. 3:22.

27. On October 25, 2012, Dr. Thurman evaluated Claimant in an office visit. He noted that previous records indicated that her bilateral hand paresthesias resolved shortly after her left carpal tunnel release surgery, but that she was now complaining of bilateral numbness and aching in both hands. She reported that her hands ached while driving and while riding her horse. Her subjective complaint was that her grip strength was diminished. Her left wrist discomfort was primarily along the volar aspect and occasionally at the thumb basal joint. She also reported left elbow discomfort. Claimant was self-treating for suspected lateral epicondylitis with a counter-force brace. Her right extremity had similar, though less intense, symptoms. Claimant was taking Ibuprofen for pain but experienced stomach irritation. She also tried Naproxen, which did not help. She denied any intervening injuries in either extremity which could be related to her symptoms. Dr. Thurman found no evidence of muscle wasting, soft tissue swelling, or crepitation of either the extensor or flexor sheaths. Tinel sign was negative and the Phalen maneuver yielded only mild left thumb tingling at approximately 30 seconds. Resisted extension at the lateral epicondyle produced discomfort. Resisted wrist extension was also symptomatic, although less so. Static two-point discrimination was between 5 to 6 mm in both the radial and ulnar distribution bilaterally. There was no subluxation of the ulnar nerve on either side of the medial epicondyle and elbow flexion test was negative for paresthesias. Palpation of Claimant's wrists did not yield any complaint of discomfort. The Finkelstein maneuver was negative for discomfort. The right and left thumb CMC joints were non-tender to translation, and passive circumduction, and there was no crepitation. Dr. Thurman recorded his impression as follows: "Ill-defined bilateral upper extremity discomfort in each volar forearm and wrist with

lateral epicondylitis on the left. Provocative symptoms for carpal tunnel median nerve compression are only associated with mild left thumb tingling. The lateral epicondyle symptoms have decreased since wearing a counterforce brace.” For treatment Dr. Thurman recommended that Claimant undergo a NSAID (nonsteroidal anti-inflammatory drug) trial and prescribed Meloxicam. He also gave Claimant exercises for her lateral epicondylitis. Ex. 2:16-17.

28. On January 13, 2013, Dr. Thurman saw Claimant for a follow-up appointment. He noted that Meloxicam did not provide her with any measurable pain relief. She reported that her wrist discomfort was associated with prolonged computer, mouse, and keyboard use, as well as grip-type activities. She also reported numbness and nocturnal paresthesias. Claimant associated the intensity of all her symptoms with the amount of keyboarding, thus she believed that her discomfort was directly related to her work. The examination yielded similar results to Claimant’s October 25, 2012 examination. Dr. Thurman noted that Claimant simply wanted authorization for new wrist braces, two to be used for heavier work and two for lighter activities. He indicated that Surety would be asked to approve the braces, but noted that Claimant did not intend to obtain them until authorized by Surety. Dr. Thurman diagnosed Claimant with intermittent carpal tunnel-type symptoms related to keyboarding, mouse, and grip activities. Ex. 2:18. He wrote Claimant a prescription for wrist braces. Ex. 2:19.

29. Dr. Thurman saw Claimant for a final office consultation on January 2, 2014. He noted that Claimant continued to experience bilateral hand pain which she associated with computer games.² Claimant reported pain reduction during periods away from work and on the weekends. She reported nocturnal symptoms of bilateral paresthesias and also while driving. She was sleeping with braces, which reduced numbness. Dr. Thurman recorded his impression that

² Claimant denies that her CTS symptoms were due to playing computer games because she did not play computer games. Tr., 36:4-5.

Claimant's "symptoms are very suggestive of median neuropathy at each wrist." He referred Claimant to Gary Walker, M.D., for performance of electrodiagnostic studies. Ex. 2:20.

30. Claimant did not follow through on the referral to Dr. Walker because "workmen's [sic] comp wouldn't pay for anything" and she believed that Dr. Walker would not treat her but "was just going to do more evaluation." Tr., 36:13-24.

31. At hearing Claimant testified that she continued to have CTS symptoms including pain in her hands and wrists, together with numbness and tingling. *Id.*, 39:19-20. She associated these symptoms with any activities involving use of her hands, such as keyboarding, driving, miscellaneous gripping activities, brushing her horse, and using tools. *Id.*, 40:1-16.

DISCUSSION AND FURTHER FINDINGS

32. The provisions of the Idaho 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).

33. **Additional medical benefits.** The sole issue is whether Claimant is entitled to additional medical benefits for treatment of her CTS. Idaho Code § 72-432(1) requires an employer to provide 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. In *Chavez v. Stokes*, 158

Idaho 793, 353 P.3d 414 (2015), the Idaho Supreme Court held that the “Commission’s review of the reasonableness of medical treatment should employ a totality of the circumstances approach.” *Chavez*, 158 Idaho at 798, 353 P.3d at 419.

34. Before an analysis of the reasonableness of medical treatment may be undertaken, however, medical causation must be addressed first. “As with industrial accident claims, an occupational disease claimant has the burden of proving, to a reasonable degree of medical probability, a causal connection between the condition for which compensation is claimed and occupational exposure to the substances or conditions which caused the alleged condition.” *Langley v. State, Industrial Special Indemnity Fund*, 126 Idaho 781, 786, 890 P.2d 732, 736 (1995). Proof of a possible causal link is not sufficient to satisfy Claimant’s burden. *Beardsley v. Idaho Forest Industries*, 127 Idaho 404, 406, 901 P.2d 511, 513 (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). Causation must be proved by expert medical testimony. *Wichterman v. J.H. Kelly, Inc.*, 144 Idaho 138, 141, 158 P.3d 301, 304 (2007).

35. In *Langley*, the Idaho Supreme Court upheld a denial of compensability for the claimant’s asthma. While his doctors indicated to varying degrees that his work environment may have irritated his respiratory condition, none of them gave an opinion, stated to a degree of reasonable medical probability, that the claimant’s shortness of breath was causally related to his work environment. 126 Idaho at 786, 890 P.2d at 736.

36. Similarly, Claimant’s treating physician, Dr. Thurman, has not given an opinion, to a degree of reasonable medical probability, that Claimant’s recurrent CTS symptoms are causally related to her workplace exposure that began in 1991. The Referee has scrutinized the medical records of Dr. Thurman’s treatment of Claimant. The records reflect that he consistently

diagnosed Claimant with CTS from 2000 to 2014. Nowhere in any of those records did Dr. Thurman state a medical opinion that causally related her CTS symptoms to her accepted occupational exposure. Merely because Dr. Thurman's medical records reflect an ongoing diagnosis of CTS does not provide sufficient evidence for Claimant to meet her burden on medical causation.

37. Claimant asserts that she has been in continuous "treatment" for CTS since 1991 because she continued to use wrist braces and take over-the-counter pain medication, even though she sought no care from any physician from September 2007 until May 2012. Thus, she argues that her request for current medical treatment is compensable because her CTS began in 1991 and has continued unabated, regardless of whether she has sought treatment for the condition from physicians. Nevertheless, while lay testimony regarding self-treatment for a medical condition is relevant, it is no substitute for the requirement of expert medical testimony on causation. The Referee cannot infer causation where the record contains no evidence of a medical opinion linking Claimant's ongoing CTS symptoms to her occupational exposure.

38. This case might have had a different result if Claimant had deposed Dr. Thurman as she initially intended, or, at the very least, sought a clear causation opinion from him in writing. As her treating physician, Dr. Thurman might have been able to provide a qualified expert medical opinion as to causation. Such evidence, however, is not before the Commission. Accordingly Claimant has failed to sustain her burden of proof on causation.

39. Because Claimant's case fails due to the lack of an expert medical opinion on causation, it is unnecessary to analyze the reasonableness of her requested medical care.

40. For the foregoing reasons, Claimant has failed to meet her burden of proving entitlement to additional medical benefits.

CONCLUSION OF LAW

1. Claimant has not proven her entitlement to additional medical care.

RECOMMENDATION

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

DATED this 10th day of February, 2016.

INDUSTRIAL COMMISSION

_____/s/_____
John C. Hummel, Referee

ATTEST:

_____/s/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of February, 2016, a true and correct copy of the foregoing **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

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10324 W. ARCO HIGHWAY
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LEA L. KEAR
P.O. BOX 6358
BOISE, ID 83707-6358

_____/s/_____

/s/
Thomas E. Limbaugh, Commissioner

/s/
Thomas P. Baskin Commissioner

ATTEST:

/s/
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of February, 2016, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following:

PENNY WEYMILLER
10324 W ARCO HIGHWAY
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sjw

/s/