

**STATE OF VERMONT
DEPARTMENT OF LABOR**

Bonnie Tomasi)	Opinion No. 68-05WC
)	
)	By: Margaret A. Mangan
v.)	Hearing Officer
)	
C & S Wholesale Grocers)	For: Patricia A. McDonald
)	Commissioner
)	
)	State File No. T-16670

Pretrial conference held on May 26, 2004
Hearing held in Montpelier on July 1, 2005;
Deposition of Dr. Thatcher on August 31, 2005;
Record closed on September 28, 2005

APPEARANCES:

Thomas C. Bixby, Esq., for the Claimant
William J. Blake, Esq., for the Defendant

ISSUE:

Were claimant's epicondylitis and carpal tunnel syndrome caused by her work at C & S?

EXHIBITS:

Claimant:

1. Personnel File
2. Letters to doctors
3. Medical Expense summary
4. Medical records

Defendant:

- A. Curriculum vitae of Dr. Verne Backus
- B. Selected Prior Records

FINDINGS OF FACT:

1. Claimant began working at C & S in December 2000, earning approximately \$9.00 an hour.
2. In February of 2001, she was transferred to the Pallet Department where as a clerk she worked with voluminous documents. She performed her tasks by placing her right elbow on the top of a stack of papers while continuously shuffling through paperwork. She also removed staples with a staple remover repetitively. She performed these tasks five days a week eight hours a day for about two years.
3. In May of 2002 claimant sought medical care for numbness along her hand and forearm. In June a muscle strain was diagnosed by MRI. Also in June Dr. Lilly noted that her elbow was more swollen than it had been earlier.
4. In July 2002, Dr. Chard diagnosed epicondylitis and recommended physical therapy. Claimant treated with therapy and a splint for several months.
5. In February 2003, Dr. McLarney diagnosed medial epicondylitis (in the area of the elbow), with ulnar nerve involvement.
6. By March of 2003, claimant consulted with a neurologist who noted tingling in claimant's forearm and third, fourth and fifth fingers. At that time, claimant reported that she was dropping things. Nerve conduction studies confirmed carpal tunnel syndrome (medial nerve entrapment at the wrist) on both sides, with the right worse than the left.
7. In May 2003, Dr. McLarney opined that claimant had right elbow medial epicondylitis with ulnar neuritis and a component of cubital tunnel syndrome and bilateral carpal tunnel syndrome. Dr. McLarney wrote, "[T]here is no question in my mind that this is work related with overuse causing this."
8. Claimant was transferred to the customer service department, but her symptoms waxed and waned.
9. On April 22, 2004, Dr. Thatcher performed a carpal tunnel release on the right side.
10. In July 2004 Dr. Thatcher noted that a computer mouse aggravated claimant's chronic epicondylitis.
11. At her deposition and in an earlier statement, claimant denied any history of carpal tunnel symptoms.

Medical History

12. In 1992 claimant wore splints after complaining about wrist and elbow complaints. In 1993 claimant was given splints again after complaining of right arm pain. In 1996, she was prescribed medication for complaints of arm and hand pain. In 1997, she had several visits to physicians for elbow and hand pain.
13. In July of 1999 and again in February of 2000, claimant complained to care providers of carpal tunnel syndrome

Medical Opinions

14. Based on the claimant's history and her symptoms, Doctors McLarney and Thatcher both found a causal relationship between her work duties and her carpal tunnel syndrome and epicondylitis.
15. Dr. Verne Backus who performed an evaluation for defendant found no such causal relationship, based on the history of symptoms predating her work at C&S and the nature of her work duties, which were unlikely to cause carpal tunnel syndrome and epicondylitis.

CONCLUSIONS OF LAW:

1. In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. *Goodwin v. Fairbanks*, 123 Vt. 161 (1962). The claimant must establish by sufficient credible evidence the character and extent of the injury and disability as well as the causal connection between the injury and the employment. *Egbert v. Book Press*, 144 Vt. 367 (1984).
2. There must be created in the mind of the trier of fact something more than a possibility, suspicion or surmise that the incidents complained of were the cause of the injury and the inference from the facts proved must be the more probable hypothesis. *Burton v. Holden & Martin Lumber Co.*, 112 Vt. 17 (1941).
3. It is clear that claimant wants to believe that her work at C&S caused her upper extremity complaints and has gone to considerable effort to support that contention, with the history provided to her physicians and to the blatant denial of problems predating her work at C&S. However, her belief does not support this claim.
4. Furthermore, because her testimony is unreliable I cannot accept the opinions from her treating physicians. The more persuasive opinion is from Dr. Backus who provided a convincing opinion that her work did not cause the upper extremity complaints, based on a review of extensive records and an understanding of the tasks claimant performed.

ORDER:

Therefore, based on the foregoing findings of fact and conclusions of law, this claim is DENIED.

Dated at Montpelier, Vermont this 29th day of November 2005.

Patricia A. McDonald
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.