

**STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY**

)	State File No. P-20880
)	
Susan Therrien)	By: Margaret A. Mangan
)	Hearing Officer
v.)	
)	For: R. Tasha Wallis
Lydall Central)	Commissioner
)	
)	Opinion No. 50-02WC

Expedited hearing held in Montpelier on November 22, 2002
Record closed on December 9, 2002

APPEARANCES:

Francis J. Carlet, Esq. for the Claimant
Andrew C. Boxer, Esq. and Gregory A. Bullman (law clerk), for the Defendant

ISSUES:

1. Did the Claimant, Susan Therrien, suffer a compensable injury to her left elbow, lateral epicondylitis, while employed by Lydall Central on or about March 22, 2000?
2. If Claimant's left elbow condition is compensable,
 - a. Is she entitled to temporary total disability compensation since August 28, 2001?
 - b. Is she entitled to medical benefits since August 28, 2001?
 - c. Is Claimant entitled to vocational rehabilitation services?

EXHIBITS:

Claimant's Exhibits are medical records from:

1. H. Taylor Caswell, M.D.
2. John M. Grobman, M.D.
3. Anthony Lapinsky, M.D.
4. Paul J. Rummo, D.O.
7. Jonathan E. Fenton, D.O. James C. Maas, M.D.
9. Victor Gennaro, D.O.
11. James Murphy, M.D.

Defendant's Exhibit:

A: Incident report

STIPULATION OF UNCONTESTED FACTS:

1. On or about March 20, 2000 Claimant was an employee of Lydall Central within the meaning of the Workers' Compensation Act (Act).
2. On or about March 20, 2000, Defendant Lydall Central was an employer within the meaning of the Act.
3. During the time of Claimant's employment from February 11, 1999 to her last day of work, August 4, 2000, she was employed as a machine operator.
4. Claimant received her last workers' compensation check on September 1, 2001 in the amount of \$125.36, for the period August 24 through August 28, 2001.
5. Claimant was terminated by Lydall Central on February 1, 2001.

FINDINGS OF FACT:

1. The exhibits are admitted into evidence and the stipulated facts are accepted as true.
2. According to notes from Dr. Taylor Caswell at North Region Orthopedic Professional Association in Littleton, New Hampshire the Claimant treated for left elbow pain in 1992. Symptoms were treated and resolved.
3. Claimant's work at Lydall, which began in 1999, involved the operation of a machine that cut "crane glass," then dumping the scraps into a dumpster. Next, she collected the finished product of aluminum and crane glass and moved it to a storage area. She also worked on welding and forming machines, lifting, pushing, pulling and dumping, which involved repetitive motion of her arms.
4. Claimant first had notice of right elbow pain in March of 2000. Within a month, she consulted with Dr. Caswell with complaints of bilateral elbow pain, with the right worse than the left. Dr. Caswell prescribed steroids. Dr. Caswell's notes indicate that her symptoms worsened. By June, he noted that she had less strength on the right and that she had symptoms, although no loss of strength, on the left.
5. Claimant last worked on August 4, 2000, although her employment officially continued until February 1, 2001.
6. On August 23, 2000 Dr. Grobman at Orthopedic Professional Association in Gilford, New Hampshire, saw the Claimant for a second opinion. Dr. Grobman noted the onset of Claimant's bilateral elbow symptoms with repetitive work and their remission when she was out of work. He diagnosed bilateral lateral epicondylitis.
7. On September 12, 2000 this Department approved the parties Form 21 Agreement for temporary total disability compensation for an injury described as bilateral elbow strain.
8. On December 20, 2000 Dr. Caswell operated on the Claimant's right elbow in a procedure called a post lateral release. Afterwards, Claimant participated in physical therapy but had "residual" symptoms in her right arm and "some original" symptoms in her left arm according to Dr. Caswell notes three months after surgery.
9. Following a visit to him on July 13, 2001, Dr. Caswell determined that the Claimant has reached medical end result with impairment, although he did not assign a permanency rating at that time.

10. The insurance carrier sent the Claimant for an examination by Dr. Anthony Lapinsky on July 25, 2001. Based on his clinical examination of the Claimant and review of the medical records, Dr. Lapinsky concluded that she had bilateral lateral epicondylitis causally related to her work, with repetitive sprain and strain of the elbow and forearm musculature. He also determined that she had reached maximum medical improvement, with no impairment because she had no neurologic deficit and good range of motion. Dr. Lapinsky recommended only a home program and observation. He opined that she was capable of sedentary work, which precluded any repetitive lifting or work activities with her upper extremities.
11. A Form 27 Notice to Discontinue Benefits was filed on August 21, 2001, based on Dr. Lapinsky's determination that Claimant had reached medical end result.
12. On August 28, 2001, consistent with the Form 27, the defendant suspended temporary total disability payments. Claimant was then working with a vocational rehabilitation specialist, Bill O'Neal, and did not do a job search because Mr. O'Neal was awaiting information from physicians.
13. On September 25, 2001, based on the 5th edition of the AMA Guides to the Evaluation of Permanent Impairment, Dr. Caswell determined that she had 2.5% impairment in each arm, for a total upper extremity permanent impairment of 5%. On October 4, 2001, Dr. Caswell passed away.
14. On October 19, 2001, Dr. Paul Rummo at the Littleton Orthopaedics in Littleton, New Hampshire diagnosed Claimant with left lateral epicondylitis.
15. When he saw her again on January 15, 2002, Dr. Rummo documented his diagnosis of left lateral epicondylitis and encouraged Claimant to go to physical therapy a few times a week. A month later, he referred her to an orthopedic surgeon for possible epicondylar release because she had not improved with conservative treatment.
16. On February 20, 2002, Claimant was referred once again by the insurance carrier for an independent medical examination, this time with Dr. John Fenton, who after interviewing and examining Claimant and reviewing medical records, opined that there was a causal relationship between her repetitive injury at work and her bilateral elbow pain. However, because of the distribution of her pain, he determined that it was myofascial in origin and not due to lateral epicondylitis. He determined that she was not capable of doing her prior job due to her pain, not to actual functional capacity. Finally, he opined that she had been at medical end result at the time of Dr. Lapinsky's evaluation in 2001 and that she had no impairment rating.

17. On September 4, 2002, again at the request of the defendant, Claimant was sent to Woodsville, New Hampshire for an evaluation by orthopedist, Dr. Victor Gennaro. Based on her history, examination and medical records, Dr. Gennaro diagnosed the Claimant's condition as lateral epicondylitis, which has the natural history of waxing and waning. Although he found a causal relationship between the Claimant's right elbow problems and her work, he could find no such relationship between the left lateral epicondylitis and her work because of the paucity of symptoms on that side while she was working and the length of time that has elapsed since she left her job.
18. Dr. Gennaro agreed with Doctors Fenton and Lapinski that Claimant has no permanent impairment in her right arm.
19. Vocational Rehabilitation benefits were started, but suspended in May 2002 because of Claimant's report that she remained symptomatic.

DISCUSSION:

1. Claimant points to the multiple defense ordered medical examinations as well as the notes from Dr. Caswell in support of her position that her left epicondylitis is compensable. However, she rejects Dr. Caswell's determination that she had reached medical end result in 2001 for her left arm remaining convinced that despite what he recorded in his notes, he meant only that the right side had reached medical end. Were it not for his untimely death, Claimant argues, he would have changed that note had he realized the error.
2. Defendant argues that the left lateral epicondylitis cannot be worked related because it developed after she left her employ with Lydall Central.
3. A careful review of the records reveals the onset of left arm symptoms while the claimant was still working for Lydall Central, although at first those symptoms were not as severe as symptoms on the right. Dr. Caswell, Dr. Fenton and Dr. Lapinsky all attributed her bilateral symptoms to her work. The conclusion is consistent with Dr. Gennaro's description of the waxing and waning nature of epicondylitis. As such, the left arm condition she now has is the same as that accepted by the carrier when it signed the Form 21. Defendant, who provided the materials to Dr. Fenton and Dr. Lapinsky and sent the Claimant to them for an independent evaluation, will not now be permitted to disavow those opinions on causation because it obtained a more favorable one from Dr. Gennaro.

4. Although the persuasive medical opinions support the Claimant's position on causation, they also prove that Claimant had reached medical end result in 2001 when she reached a plateau. Consequently, she is not entitled to temporary total disability benefits after that point.

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 (1963). 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. Pursuant to § 640(a) an injured worker is entitled to reasonable surgical, medical and nursing services for the work-related injury. Because this claimant's left arm condition is compensable, it necessarily follows that reasonable and causally related treatment is as well.
4. A claimant is entitled to temporary disability compensation until reaching medical end result or successfully returning to work. *Coburn v. Frank Dodge & Sons*, 165 Vt. 415 (1996). Medical end result is the point at which a person has reached a substantial plateau in the medical recovery process, such that significant further improvement is not expected regardless of treatment. WC Rule 2.1200. The fact that some treatment continues to be necessary does not preclude a finding of medical end result if the underlying condition causing the disability has become stable and if further treatment will not improve that condition. *Coburn* 165 Vt. 529.
5. Despite the Claimant's subjective lay opinion, the objective expert evidence demonstrates that she had reached a plateau in 2001 and that temporary benefits were properly terminated.
6. The medical evidence presents a unanimous opinion that Claimant cannot return to her previous work and she has been found entitled to VR services pursuant to § 641. As such, she is entitled to the resumption of the VR services when that can be arranged.

ORDER:

THEREFORE, based on the Foregoing Findings of Fact and Conclusions of Law, I conclude that Claimant's left lateral epicondylitis arose out of and in the course of her employment. Accordingly, Defendant is ordered to:

1. Pay for reasonable medical, surgical and nursing services;
2. Resume vocational rehabilitation services.

Claimant's claim for temporary total disability benefits is DENIED.

Dated at Montpelier, Vermont this 19th day of December 2002.

R. Tasha Wallis
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.