STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

NORMA CACCIA	)	
	)	
VS.	)	W.C.C. 01-02080
	)	
BROWN UNIVERSITY	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter came on to be heard before the Appellate Division on the respondent/employer's appeal from the decision of the trial court granting the Employee's Original Petition for workers' compensation benefits. After careful review of the record and the arguments of counsel, we deny the appeal of the employer and affirm the decision and decree of the trial judge.

The employee's petition alleges that she developed bilateral carpal tunnel syndrome as a result of repetitive use of her upper extremities and that this condition disabled her from work beginning November 20, 2000. At the pretrial conference, the petition was granted and the employee was awarded weekly benefits for partial incapacity from November 29, 2000 and continuing. The employer claimed a trial in a timely manner.

The employee, a 72 year old female, testified that she had worked for Brown University for thirty-four (34) years, first as a clerk in the personnel department, then as an executive secretary in the physics department, and for the last twenty (20) years as the administrative assistant to Professor Leon Cooper. The duties she performed for Dr. Cooper included answering the telephone, handling the mail, filing, taking shorthand, typing, and working on the computer. She asserted that she did typing for three (3) to five (5) hours a day. She also had to lift and carry books, magazines and files weighing between five (5) and eight (8) pounds.

About four (4) or five (5) years ago, Ms. Caccia began to experience problems with her right hand. She saw Dr. Edward Spindell, who administered a cortisone shot. Her complaints resolved within a week or two and she continued working. However, in September 2000, she noted numbness and pain in both hands and up her arms into her shoulders. The pain was so bothersome that she had trouble sleeping. In November, she informed Professor Cooper that she was leaving work to see a doctor because her hands hurt so much that she could not write. The employee saw Dr. Stephen D'Amato on November 20, 2000 at North Providence Medical Services. At that time, she had complaints regarding both shoulders, arms, wrists and hands. Dr. D'Amato treated her shoulder problems, but advised her to see an orthopedic surgeon regarding her hands. The employee did not return to work the next day.

Ms. Caccia began treating with Dr. Gregory Austin on November 28, 2000. He referred her for EMG and nerve conduction studies which were consistent with severe bilateral carpal tunnel syndrome. Surgery was discussed but had not been scheduled at the time of the trial. The employee has not returned to work in any capacity.

The medical evidence in this matter consists of the reports of Dr. Stephen D'Amato and North Providence Medical Services, the reports and deposition of Dr. Gregory Austin and the reports and deposition of Dr. Arnold-Peter Weiss.

As noted above, on November 20, 2000, the employee went to North Providence Medical Services, a walk-in clinic, with a chief complaint of bilateral shoulder pain and joint pain. She advised the doctor that she had previously been diagnosed with carpal tunnel syndrome. X-rays were taken of her shoulders, hands and wrists. Dr. D'Amato diagnosed bilateral subacromial bursitis with impingement syndrome, right carpal tunnel syndrome, and osteoarthritis and degenerative joint disease. He prescribed medication, referred the employee to Dr. A. Louis Mariorenzi or Dr. Gregory Austin for treatment of her hands, and advised her to stay out of work for two (2) weeks.

Dr. Austin, an orthopedic surgeon specializing in hand surgery, evaluated the employee for the first time on November 28, 2000. His diagnosis was bilateral hand osteoarthritis and probable carpal tunnel syndrome. He referred her for EMG and nerve conduction studies. The results of those studies were consistent with severe bilateral carpal tunnel syndrome. In his report of March

19, 2001, Dr. Austin indicates that there is also axonal injury and possibly mononeuritis multiplex or underlying polyneuropathy. The doctor advised Ms. Caccia that the multiple problems made the chances of curing all of them through surgery less likely, but he did recommend bilateral carpal tunnel releases. Ms. Caccia indicated she wanted some time to think about it.

The doctor testified that in his opinion, the employee's work activities as a secretary caused her condition and that she had to limit her repetitive activities and wear hand braces in order to minimize her symptoms. He explained that he did not have any details as to the employee's exact job duties, but understood that she worked as a secretary, which he assumed involved repetitive activity for a majority of the day. He also stated that the bilateral hand osteoarthritis, although of a moderate degree, was not a major factor in her complaints or disability.

On cross-examination, Dr. Austin acknowledged that the employee's age and her genetic makeup may also have contributed to the development of the carpal tunnel syndrome, but he could not state with any certainty to what degree or percentage each contributed.

Dr. Weiss, an orthopedic surgeon specializing in hand, wrist and elbow surgery, conducted an impartial medical examination of the employee on May 10, 2001 at the request of the court. He diagnosed bilateral carpal tunnel syndrome and stated that, based upon the history that the employee had worked for thirty (30) years as an administrative assistant doing keyboarding for more than fifty percent (50%) of the day, the condition was causally related to her employment.

He indicated that she was partially disabled in that she should wear wrist splints while working and should not lift greater than five (5) pounds.

The doctor testified that working at a keyboard or typing for four (4) hours a day over thirty (30) years was sufficiently repetitive to cause carpal tunnel syndrome, even if the activity was not continuous but was spread out over the course of the work day. He indicated that if the employee typed less than four (4) hours a day in total that he might change his opinion as to causation. Dr. Weiss also stated that if the employee chose not to undergo surgery, he would conclude that she could return to work wearing wrist splints because she had decided she could tolerate the condition of her hands in her everyday activities and, therefore, should be able to tolerate it at work.

The employer has filed two (2) reasons of appeal alleging that the decree is wrong as a matter of law because there is no competent evidence that the carpal tunnel syndrome was caused by Ms. Caccia's work activities at Brown University and that there is no competent evidence that she is disabled from work due to bilateral carpal tunnel syndrome. Pursuant to R.I.G.L. § 28-35-28(b), the findings of fact made by a trial judge are final unless found to be clearly erroneous. Diocese of Providence v. Vaz, 679 A.2d 879, 881 (R.I. 1996). The Appellate Division cannot undertake a *de novo* review of the record and independently weigh the evidence without first concluding that the trial judge overlooked or misconceived material evidence in arriving at his factual findings.

Grimes Box Co.,Inc. v. Miguel, 509 A.2d 1002, 1004 (R.I. 1986). We find no such error on the part of the trial judge in the present matter.

The employer points out that Dr. Austin stated that he could not state with a reasonable degree of medical certainty whether the aging process, the employee's genetic profile, the work activities, or some combination of all three (3), caused the carpal tunnel syndrome. This comment is taken out of context of the entire deposition. The doctor did clearly state on several occasions that based upon the repetitive nature of the employee's work, that it certainly contributed to the development of carpal tunnel syndrome. (Pet. Exh. 4, pp. 31, 33) He was simply unable to assess what percentage each factor may have contributed. The doctor's acknowledgment of the limitations of medical science, however, is not fatal to the employee's petition.

It is well-settled that an employee need only establish that the conditions and nature of her employment contributed to the injury. Mulcahey v. New England Newspapers, Inc., 488 A.2d 681, 684 (R.I. 1985). In addition, an employer takes the employee as it finds her. Carter v. ITT Royal Elec. Div., 503 A.2d 122, 125 (R.I. 1986). The fact that an employee may be more susceptible to injury or disease due to age, or genetic makeup, or other preexisting conditions, does not preclude the employee from receiving benefits when the employment has contributed to the injury or disease. Dr. Austin stated that the repetitive activities contributed to the development of the carpal tunnel

syndrome. His testimony constituted competent evidence upon which the trial judge could rely in his findings.

The employer further points out that the opinions of Dr. Weiss regarding causation are not competent because they are based upon the history that the employee worked as an administrative assistant for thirty (30) years rather than for twenty (20) years. Ms. Caccia had been employed by Brown University for about thirty-four (34) years. Initially, she was a clerk in the personnel department and then an executive secretary and technical typist in the physics department. The last twenty (20) years she worked for Dr. Cooper as his administrative assistant. The employee testified that in this position she spent between four (4) and five (5) hours a day typing and doing data entry work.

Although the employee acknowledged that she did not perform four (4) or five (5) hours of continuous typing each day, her testimony that she did type or do data entry work the majority of her work day was never contradicted. The trial judge specifically stated that he accepted the employee's testimony regarding the amount of typing and keyboard work she did. The fact that she did this for twenty (20) years rather than thirty (30) years is insignificant in this case. The primary factor was that she was doing repetitive work of a nature commonly associated with carpal tunnel syndrome and she did it for a lengthy period of time, whether it was twenty (20) years or thirty (30) years. After reviewing the doctor's testimony as a whole, we cannot say that the trial judge clearly erred in his assessment of the opinions rendered.

In its second reason of appeal, the employer argues that there is no competent evidence to establish incapacity. Dr. Austin testified as follows:

> "She had subsequently told me that she was unable to do the job that she was doing because of the symptoms, which is reasonable based on my evaluation of her; and I would put restrictions on her based on that with regard to her normal activities." (Pet. Exh. 4, pp. 7-8)

The doctor recommended that she wear wrist splints on both hands and limit her repetitive activities. Clearly, this would constitute a disability or inability to perform all of the functions of her regular employment. On cross-examination, Dr. Austin acknowledged that if a person with the same examination findings told him that she felt she could do whatever she needed to do in order to perform the job, the doctor would allow her to work. However, Ms. Caccia indicated that her job activities were causing so much pain and discomfort that she could not write.

A physician may factor in an individual's pain tolerance in determining their ability to work, as well as the patient's statements as to what activities cause an increase in symptoms. An employee should not be forced to work in pain or suffer severe pain and discomfort at home because she was forced to return to full-time employment. In this case, EMG and nerve conduction studies had documented that the employee had moderate to severe bilateral carpal tunnel syndrome. As Dr. Austin stated, it was not unreasonable, based on his evaluation of the employee, that she was unable to perform the duties of her regular job.

Dr. Weiss stated that his restrictions were temporary and based upon the expectation that the employee would have the surgery. He testified that if she chose not to have the surgery, then it would be his opinion that she could return to work, because she was apparently able to tolerate the pain and discomfort in her everyday activities and should be able to tolerate them at work. However, the employee is obviously able to limit her activities at home so as to minimize her symptoms. If she had to return to work, she must be able to perform all of the duties of her regular job on a full-time basis and maintain her normal production. This is quite a different situation. It is entirely unreasonable to compel an employee to endure pain and discomfort the entire work day, and/or the entire evening after work, simply because the activity cannot make it any worse.

The trial judge obviously relied upon the opinions of Dr. Austin regarding disability and the initial opinion of Dr. Weiss on the date he examined the employee. We are unable to find he was clearly erroneous in his assessment of the testimony of the two (2) physicians and his finding that the employee was partially disabled.

Based upon the foregoing, the employer's appeal is denied and dismissed and the decision and decree of the trial judge are affirmed.

In accordance with Sec. 2.20 of the Rules of Practice of the Workers' Compensation Court, a final decree, a copy of which is enclosed, shall be entered on

Arrigan, C.J. and Healy, J. concur.

ENTER:

Arrigan, C.J.

Healy, J.

Olsson, J.

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FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard by the Appellate Division upon the appeal of the respondent/employer and upon consideration thereof, the appeal is denied and dismissed, and it is

ORDERED, ADJUDGED AND DECREED:

1. That the findings of fact and the orders contained in a decree of this Court entered on February 18, 2002 be, and they hereby are, affirmed.

2. That the employer shall pay a counsel fee in the sum of Seven Hundred Fifty and 00/100 ($750.00) Dollars to Charles Garganese, Jr., Esq., for the successful defense of the employer's appeal.

Entered as the final decree of this Court this day of

BY ORDER:

_____

ENTER:

_____
Arrigan, C.J.

_____
Healy, J.

_____
Olsson, J.

I hereby certify that copies were mailed to Charles Garganese, Jr. Esq., and Michael T. Wallor, Esq., on

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