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NO. 25220

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

KATHERINE S. CHUNG, Claimant-Appellant, v.
GTE HAWAIIAN TELEPHONE COMPANY, INC.,
and TRAVELERS INSURANCE COMPANY,
Employer/Insurance Carrier-Appellee

APPEAL FROM THE LABOR AND
INDUSTRIAL RELATIONS APPEALS BOARD
(Case No. AB 2000-408 (2-99-16326))

MEMORANDUM OPINION

(By: Lim, Acting C.J., Foley and Fujise, JJ.)

Katherine Sagon Chung (Claimant) appeals the July 23, 2002 decision and order of the Labor and Industrial Relations Appeals Board (the Board)¹ which affirmed the September 28, 2000 decision the Director of Labor and Industrial Relations (the Director) rendered in favor of Employer/Insurance Adjuster GTE Hawaiian Telephone Company, Inc./Travelers Insurance Company (collectively, the Employer). The Director had denied Claimant's workers' compensation claim for her left de Quervain's tenosynovitis, "sustained . . . on or about November 6, 1999," because "claimant's injuries are not work related."

On appeal, Claimant argues that the Board improperly shifted the burden of proof to her, and that there was not substantial evidence to rebut the presumption of compensability.

¹ Chairman of the Labor and Industrial Relations Board (the Board) Randall Y. Iwase and Board member Carol K. Yamamoto signed the July 23, 2002 majority decision and order. Board member Vicente F. Aquino dissented.

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We agree with Claimant, so we vacate and remand.

I. Background.

In its decision and order, the Board found and concluded, in pertinent part, as follows:

FINDINGS OF FACT

1. Claimant was employed as a customer service representative for GTE HAWAIIAN TELEPHONE COMPANY, INC., nka Verizon Hawaii ("Employer").

2. Claimant began her career with Employer in 1976 as a directory assistance operator. Claimant transferred to customer service in 1986 or 1987, where she performed duties that involved frequent typing on a keyboard. Claimant did this job for about four years, and then in 1990 or 1991, Claimant transferred to the paging department. While in the paging department, Claimant's work involved customer contact, and some typing and/or keyboarding. After working in the paging department for about two years, Claimant, in or around 1992 or 1993, transferred to another department to do "offline" work. That work involved researching customer accounts and statistics. Offline work involved much less typing and keyboarding work.

3. In September of 1999, Claimant transferred back to customer service and more keyboarding work. Two or three months after her transfer back to customer service, Claimant complained of pain and swelling in the hands and wrists, left more than right. Claimant was right hand dominant.

4. Claimant's coworker, Victoria Muraki, remembered Claimant complaining about her sore hands within three months of her transfer back to customer service.

5. On November 9, 1999, Claimant informed Sandy Chesemore of her hand complaints and difficulty typing because of her symptoms. Ms. Chesemore was Employer's resource person for personnel and ergonomics issues. According to Ms. Chesemore, Claimant told her that she had sore and swollen left wrist and swollen right wrist beginning November 6, 1999. Ms. Chesemore evaluated Claimant's work station and determined that her keyboard placement was slightly askew. Ms. Chesemore found no other irregularities with Claimant's work station. A request was made to have the placement of the keyboard corrected. Following her meeting with Claimant, Ms. Chesemore filed a WC-1 report of industrial injury.

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Medical Opinions

16. Claimant was evaluated by Dr. Leonard Cupo, an occupational medicine specialist, on April 13, 2000. Based on Dr. Cupo's opinions and his deposition testimony, we find that de Quervain's tenosynovitis is a condition where there is

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inflammation of the tendons and tendon sheaths of the first dorsal compartment of the wrist. The first dorsal compartment is the area that runs on the top thumb side of the wrist. Inflammation of the covering of the tendon sheaths in this area can cause pain when you move the thumb.

De Quervain's tenosynovitis can be caused by cumulative or repetitive movements or trauma of the thumb, acute trauma to the first dorsal compartment of the wrist, a sudden or acute hyperextension injury of the thumb, inflammatory rheumatological disorders, and medical conditions that cause swelling or fluid retention such as diabetes and weight gain associated with edematous conditions like pregnancy and renal failure.

De Quervain's tenosynovitis is a very distinct and different phenomenon from carpal tunnel syndrome. The latter involves entrapment of the median nerve in the carpal tunnel. Tendons and the median nerve run through the carpal tunnel, which is located on the volar or palm side of the wrist.

17. At the evaluation with Dr. Cupo on April 13, 2000, Claimant told him that on November 6, 1999, she developed left wrist pain after hyperextending her left wrist while using the telephone at home. Claimant related that her left wrist pain resolved over the next few days, but then recurred on November 9, 2000 [sic] with swelling in the wrist. At the time of the evaluation with Dr. Cupo, Claimant had left wrist and thumb pain, but no swelling or edema. Claimant denied any right wrist or right thumb symptoms at the evaluation. Claimant complained of increased left thumb and wrist symptoms while performing activities of daily living, such as showering, brushing her hair, applying make-up, driving, lifting, and working as a service representative.

Upon examination. Dr. Cupo found, among other things, positive Finkelstein's test,² no swelling of the left wrist or hand, some tenderness to palpation over the first dorsal left wrist compartment, decreased range of motion and presence of pain at the thumb with grip and pinch, and no findings for carpal tunnel syndrome. Dr. Cupo opined that Claimant's physical findings were consistent with left de Quervain's tenosynovitis.

Although Dr. Cupo acknowledged that de Quervain's tenosynovitis could be caused by cumulative trauma, based on the history provided by Claimant that her symptoms began after the telephone incident at home, Dr. Cupo opined that in Claimant's case, her left de Quervain's tenosynovitis was caused by the acute hyperextension injury to her left thumb and wrist while using the telephone at home.

18. On June 8, 2001, Claimant saw Dr. Bruce Hector for an independent medical evaluation. According to Dr. Hector, Claimant reported that she had symptoms of throbbing fingers and swelling in the hands a few days before November 6, 1999. Claimant also

² The Board's July 23, 2002 decision and order noted that, "The Finkelstein's test is a test involving lateral wrist flexion of the clenched fist that is used to assist in the diagnosis of de Quervain's disease. TABER'S CYCLOPEDIA DICTIONARY (18th ed. 1977)."

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reported, according to Dr. Hector, that she sustained an acute hyperextension injury to the left wrist in "October of 1999" when she was using the telephone and had to manually place her wrist back into the neutral position. A week after this episode, Claimant stated that she began to experience a pinching sensation in the left thumb and pain that would radiate along the radial aspect of the wrist into the distal forearm. Claimant further related to Dr. Hector that she had gained weight during the period immediately prior to the onset of her left wrist symptoms.

Claimant told Dr. Hector that since undergoing treatment, she had experience an 80% resolution of her symptoms from de Quervain's tenosynovitis. Claimant told Dr. Hector that her symptoms were now limited to the left thumb only with periodic pinching sensation and infrequent radiation to the distal forearm [sic].

After an examination, Dr. Hector determined that Claimant's Finkelstein's test was negative. Other clinical tests performed by Dr. Hector at the evaluation were suggestive of or consistent with median nerve entrapment, i.e., carpal tunnel syndrome, as well as, ulnar nerve entrapment at the elbow.

According to Dr. Hector's review of Claimant's medical records, Claimant weighed 177 pounds when she saw [her family physician] Dr. [Mina] Ganapathy on November 11, 1999. When she saw Dr. Cupo on April 13, 2000, she weighed 180 pounds. At the time of the evaluation with Dr. Hector, Claimant weighed 186.5 pounds and was the heaviest that she had ever been in her entire life.

Dr. Hector opined that while he could not rule out the hyperextension injury as the cause of Claimant's de Quervain's tenosynovitis, he was more inclined to attribute the condition to Claimant's weight gain, which, according to Claimant, occurred during the period immediately preceding the onset of her symptoms.

Claimant's Trial Testimony

19. Claimant testified that neither Dr. Ganapathy, nor [another treating physician, orthopedic surgeon] Dr. [James] Scoggin, has ever told her what caused her left de Quervain's tenosynovitis. According to Claimant, she told both Dr. Ganapathy and Dr. Scoggin about the nature of her work duties, but neither related her condition to her work. Claimant could not recall any physician telling her that her left de Quervain's tenosynovitis was related to her employment.

Claimant confirmed at trial that she did, in fact, hyperextend her left wrist in a telephone incident at home, and experienced shocking pain in the left wrist as a result. Claimant testified that she went back to work after the incident and her hands hurt even more. Claimant maintained, however, that her hands were hurting even before the telephone incident, but her hand symptoms worsened after the telephone incident. Claimant acknowledged that her symptoms were reduced or improved with rest.

Nature of Work Injury

20. Based on the medical evidence and the diagnosis

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rendered by Dr. Scoggin, Dr. Ganapathy, Dr. Cupo, and Dr. Hector, we find that the nature of the condition for which Claimant seeks compensation is left de Quervain's tenosynovitis.

21. Although Dr. Hector's clinical tests were suggestive of left carpal tunnel syndrome at the time of his evaluation, the medical records show that Claimant was not diagnosed with that condition, and did not have symptoms consistent with that condition prior to June of 2001.

Left de Quervain's Tenosynovitis Not Related to Work

22. Although the opinions of Dr. Cupo and Dr. Hector differed on the causality of Claimant's de Quervain's tenosynovitis, neither attributed the condition to Claimant's work activities.

23. Although both Dr. Ganapathy and Dr. Scoggin were aware of the nature of Claimant's work duties and her claim alleging that her work duties caused or aggravated her left wrist condition, neither proffered any opinions that Claimant's left de Quervain's tenosynovitis was, in any way, related to her employment. On the contrary, Dr. Ganapathy expressed doubt about any work connection between Claimant's left wrist symptoms and her job duties when she questioned Claimant at the November 11, 1999 visit. There is no medical opinion from any of Claimant's treating physicians to support a finding that Claimant's work duties resulted in cumulative trauma to the thumb so as to cause de Quervain's tenosynovitis.

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No Aggravation of Left de Quervain's Tenosynovitis From Work

26. While there was evidence that Claimant's symptoms increased with use of her thumb at work and at home while performing activities of daily living and decreased when the offending activity was stopped and her thumb was allowed to rest, there is no medical evidence that the underlying condition of de Quervain's tenosynovitis or the course of the disease was aggravated or made worse on November 6, 1999 by Claimant's keyboarding duties at work.

27. Based on the foregoing, including the opinions of Dr. Cupo and Dr. Hector, and due to the lack of medical evidence to support Claimant's claim for either the left or right wrist/hand, we find that Employer has presented substantial evidence to overcome the presumption that Claimant's left de Quervain's tenosynovitis arose out of and in the course of her employment.

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CONCLUSIONS OF LAW

Based on the foregoing, we conclude that Claimant did not sustain a personal injury to the left or right wrist/hand on November 6, 1999, arising out of and in the course of employment.

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ORDER

The decision of the Director, dated September 28, 2000, is affirmed, in accordance with the foregoing.

(Footnote supplied; original footnote omitted).

II. Discussion.

"We review challenges to ultimate decisions of compensability under the 'clearly erroneous' standard. Thus, the appellate court considers whether such a finding is clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record." Korsak v. Hawai'i Permanente Med. Group, Inc., 94 Hawai'i 257, 259, 12 P.3d 357, 359 (App. 1999) (brackets, citations and internal quotation marks omitted).

"In any proceeding for the enforcement of a claim for compensation under this chapter it shall be presumed, in the absence of substantial evidence to the contrary: That the claim is for a covered work injury[.]" Hawaii Revised Statutes (HRS) § 386-85(1) (1993) (enumeration omitted; format modified). This presumption "imposes upon the employer the burden of going forward with the evidence and the burden of persuasion. The employer may overcome the presumption only with substantial evidence that the injury is unrelated to the employment. Evidence, to be substantial, must be credible and relevant." Korsak, 94 Hawai'i at 260, 12 P.3d at 360 (citation and block quote format omitted; emphasis in the original).

This court has mapped the analytical framework applicable to this case:

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The Hawai'i Supreme Court, in a case analogous to this one, addressed the issue of what type of evidence constitutes "substantial evidence" to rebut the presumption of compensability. Akamine v. Hawaiian Packing & Crating Co., 53 Haw. 406, 495 P.2d 1164, (1972).

Edward Akamine died after collapsing while pushing a loaded handtruck at work. His dependents filed a claim for worker's compensation. His employer presented evidence in the form of medical testimony that his preexisting pathological condition was the sole cause of death. The Board denied compensation based on this evidence, reasoning that his death was due to preexisting cardiovascular disease and not attributable to employment.

The supreme court reversed, however, holding that generalized medical opinion concerning the cause of an injury does not constitute "substantial evidence" to rebut the presumption of compensability.

For a medical man may give a generalized opinion that there was no connection between an incident at work and a heart attack, and in his own mind, may mean thereby that a pre-existing pathological condition was the overwhelming factor in bringing about the attack and that the part played by the work was insignificant. But, while it may be sound medically to say that the work did not 'cause' the attack, it may be bad law, because, in general, existing law treats the slightest factor of aggravation as an adequate 'cause.'

Id. at 410, 495 P.2d at 1167 (internal quotation marks and citations omitted).

Accordingly, "[t]he primary focus of the medical testimony should have been a discussion on whether the employment effort, whether great or little, in any way aggravated Mr. Akamine's heart condition which resulted in his death." Id. at 412, 495 P.2d at 1168.

Korsak, 94 Hawai'i at 260, 12 P.3d at 360 (brackets in the original). Accordingly, we "viewed the [employer's] doctors' reports as failing expressly, directly, and specifically to rebut the presumption because the reports did not address whether Korsak's existing low back condition could have, in any way, been exacerbated in the March 1993 [physical therapy] session [for a work-related knee injury]." Korsak v. Hawaii Permanente Med. Group, Inc., 94 Hawai'i 297, 308, 12 P.3d 1238, 1249 (2000) (emphases omitted). See also Nakamura v. State, 98 Hawai'i 263,

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269-70, 47 P.3d 730, 736-37 (2002).

Hence, while the Board in this case found that "there is no medical evidence that the underlying condition of de Quervain's tenosynovitis or the course of the disease was aggravated or made worse on November 6, 1999 by Claimant's keyboarding duties at work[,] " the HRS § 386-85(1) presumption rendered such evidence on behalf of Claimant unnecessary in the first instance and unless and until the Employer came forward with "substantial evidence that the injury is unrelated to the employment." Korsak, 94 Hawai'i at 260, 12 P.3d at 360 (citation and block quote format omitted; emphasis omitted); Nakamura, 98 Hawai'i at 268, 47 P.3d at 735 ("Once the trier of fact determines that the employer has adduced substantial evidence that could overcome the presumption, it must then weigh that evidence against the evidence presented by the claimant. In so doing, the employer bears the burden of persuasion in which the claimant is given the benefit of the doubt." (Citations omitted.)).

In this endeavor, by law, "[t]he primary focus of the medical testimony should have been a discussion on whether the employment effort, whether great or little, in any way aggravated [Claimant's left de Quervain's tenosynovitis]." Korsak, 94 Hawai'i at 260, 12 P.3d at 360 (citation and internal quotation marks omitted; some brackets in the original). Given the evidence noted by the Board that Claimant's work activity

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appeared to exacerbate her condition, this was "the obvious issue that a reasonable trier of fact would logically need to resolve[.]" Nakamura, 98 Hawai'i at 269, 47 P.3d at 736.

Instead, Employer proffered the opinion of Dr. Cupo, to the effect that Claimant's left de Quervain's tenosynovitis was caused by her November 6, 1999 hyperextension injury at home; and the opinion of Dr. Hector, to the effect that Claimant's then-resolving left de Quervain's tenosynovitis -- or perhaps it was mild left carpal tunnel syndrome -- was caused by obesity. "But, while it may be sound medically to say that the work did not 'cause' [Claimant's condition], it may be bad law, because, in general, existing law treats the slightest factor of aggravation as an adequate 'cause.'" Korsak, 94 Hawai'i at 260, 12 P.3d at 360 (citation and block quote format omitted). More to the point, neither the evidence relied upon by the Board, nor the record as a whole, contains any medical evidence that "expressly, directly, and specifically . . . rebut[s] the presumption because the reports did not address whether [Claimant's left de Quervain's tenosynovitis] could have, in any way, been exacerbated [by her work activity]." Korsak, 94 Hawai'i at 308, 12 P.3d at 1249 (emphases omitted). Indeed, the doctors do not appear to have even considered whether Claimant's injury was exacerbated in any way by her keyboarding work.

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III. Conclusion.

Because "such generalized medical opinions" as were relied upon by the Board in this case "do not constitute 'substantial evidence[,]'" Korsak, 94 Hawai'i at 261, 12 P.3d at 361, we conclude the HRS § 386-85(1) presumption stands, and the Board's conclusion was clearly erroneous. Korsak, 94 Hawai'i at 261, 12 P.3d at 361. Accordingly, we vacate the Board's July 23, 2002 decision and order, and remand for a determination of the workers' compensation benefits due to Claimant for her left de Quervain's tenosynovitis.

DATED: Honolulu, Hawai'i, September 9, 2004.

On the briefs:

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Acting Chief Judge

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