STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

MARY R. KAROPCHINSKY,
Claimant Below, Petitioner

FILED
November 2, 2018
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 18-0369 (BOR Appeal No. 2052266)
(Claim No. 2014004573)

TELATLANTIC COMMUNICATIONS, INC.,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Mary R. Karopchinsky, by Robert L. Stultz, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review.[1]

The issues on appeal are requests to update the claim with additional compensable components of the claim, as well as the medical treatment related to the requested compensable conditions. The claims administrator denied a request to add the diagnosis of bilateral ulnar neuropathy as a compensable condition to the claim in an Order dated March 1, 2017. On April 13, 2017, the claims administrator denied a request for left cubital tunnel release with ulnar nerve transposition. Also on April 13, 2017, the claims administrator denied payment of a bill for a physician's office visit on March 30, 2017. The Workers' Compensation Office of Judges affirmed the claims administrator's decisions on October 10, 2017. This appeal arises from the Board of Review's Final Order dated March 26, 2018, in which the Board affirmed the October 10, 2017, Order of the Office of Judges. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

[1] Teleatlantic Communications, Inc., the Employer, did not file a response to the petition for appeal.

Ms. Karopchinsky, who worked as a telecommunications technician, developed carpal tunnel syndrome as a result of her employment. She had multiple surgeries to address her carpal tunnel syndrome, once in 1994 and the other in 2011. Shiv U. Navada, M.D., a neurologist, conducted a nerve study on May 24, 2011, and reported the following impression: median motor and sensory distal latencies were delayed bilaterally; ulnar motor studies were normal bilaterally, ulnar palmar sensory distal latencies were just above the upper limits of normal bilaterally; electromyography was normal and not supportive of C5-T1 radiculopathy on either side. Dr. Navada stated that the studies may suggest carpal tunnel syndrome, but it was noted that Mr. Karopchinsky had undergone carpal tunnel release and the changes associated with the syndrome do not always normalize. Dr. Navada stated that the changes were more or less comparable to nerve studies conducted on March 26, 2009.

In April of 2013, Ms. Karopchinsky was placed in a new position that was sedentary in nature and was specifically created for her. The position was not repetitive in nature and did not require her to pull cable. Because of recurring problems to her hands and elbows, Ms. Karopchinsky came under the care and treatment of Ann Allen, M.D., at West Virginia University Occupational Medicine. On November 10, 2015, Ms. Karopchinsky presented to Dr. Allen with hand/wrist pain and reported increased pain with numbness while driving. A May 10, 2013, electromyography test revealed moderate right carpal tunnel syndrome with mild left carpal tunnel syndrome. The assessment was bilateral carpal tunnel syndrome.

In a report dated November 3, 2016, Zaid Al-Qudah, M.D., found electrophysiological evidence of severe right median neuropathy at the wrist, as seen with carpal tunnel syndrome, with active denervation. He also assessed left median neuropathy at the wrist, as seen with carpal tunnel syndrome. Dr. Al-Qudah also noted bilateral ulnar neuropathies at the elbows that was primarily demyelinating with mild axenal loss of the left ulnar innervated muscles. Dr. Al-Qudah's assessment was based upon a nerve conduction study and electromyography tests of Ms. Karopchinsky's upper extremities. Because she had three prior surgeries, Dr. Al-Qudah questioned whether she would be a candidate for more surgeries and referred her to William J. Dahl, M.D., for her bilateral ulnar neuropathy.

On January 4, 2017, Dr. Allen requested that bilateral ulnar neuropathy be added to the claim as a compensable component. Dr. Allen noted that based on Ms. Karopchinsky's longtime work in the telecommunications industry, it was highly likely that the ulnar neuropathy was from the same issues which caused her carpal tunnel syndrome, which was a repetitive high grip requirement job with awkward positioning over many years.

An independent medical evaluation report dated January 23, 2017, was submitted by P. Kent Thrush, M.D. Dr. Thrush, an orthopedic surgeon, noted Ms. Karopchinsky's history of prior carpal tunnel surgeries and noted that her prior tests revealed bilateral carpal tunnel syndrome consistent with the timeframe of her surgeries. However, past electromyography tests did not reveal significant ulnar problems at the wrist or the elbow. Dr. Thrush also noted that when she returned to work around 2012, she returned to work with modifications. Dr. Thrush opined that Ms. Karopchinsky developed some ulnar neuropathy findings at the elbow sometime between her last electromyography of 2011 per Dr. Navada and the subsequent

electromyography of Dr. Al-Qudah in 2016. Dr. Thrush could not state with a reasonable degree of medical certainty or probability that any ulnar neuropathy problems of the elbow are related to the work injury of May 5, 2011. Dr. Thrush was of the opinion that Ms. Karopchinsky's ulnar nerve problem would not be related to the work injury of May 5, 2011. Dr. Thrush stated that he was not aware of any epidemiological studies that link ulnar neuropathy at the elbow to any specific repetitive work. He further stated that ulnar neuropathy of the elbow is actually pretty common in the general population and the cause is generally unknown. Dr. Thrush was of the opinion that surgery and monthly visits with Dr. Allen are not medically necessary or reasonable.

Ms. Karopchinsky was treated by Dr. Dahl, who assessed her with right cubital tunnel syndrome in a report dated January 25, 2017. After reviewing Ms. Karopchinsky's electromyography reports from Dr. Al-Qudah, Dr. Dahl recommended right cubital tunnel release surgery. Dr. Dahl noted that the expectations of the surgery were limited but would be successful if her symptoms did not get worse.

On March 1, 2017, the claims administrator denied Ms. Karopchinsky's request to add the diagnosis of bilateral ulnar neuropathy as a compensable condition to the claim. The claims administrator stated that the request was being denied because the condition is unrelated to the work injury. The claims administrator noted that Ms. Karopchinsky was previously diagnosed with bilateral ulnar neuropathy of the wrists prior to her work injury.

On March 30, 2017, Ms. Karopchinsky saw Dr. Allen for a follow-up of her bilateral carpal tunnel issues and her ulnar neuropathy. Mr. Karopchinsky reported significant reduction in the burning and pain in her right hand following her surgery. She planned to have left elbow surgery on May 2, 2017. The assessment was cubital tunnel syndrome on the right side and bilateral carpal tunnel syndrome.

Ms. Karopchinsky was seen by Dr. Dahl for a follow-up to the right cubital tunnel release on March 2, 2017. In his April 19, 2017, report, Dr. Dahl noted that she was progressing well and the burning had resolved. Ms. Karopchinsky reported some numbness in the right hand but the condition had improved since her last visit. She reported continued difficulty but denied any pain at rest. She was scheduled for left ulnar nerve decompression with or without transposition.

On April 13, 2017, the claims administrator denied Ms. Karopchinsky's request for left cubital release with ulnar nerve transposition. The claims administrator reasoned that because cubital tunnel syndrome was not a recognized diagnosis in the claim any treatment related to the condition should not be approved. The claims administrator also issued a separate Order on April 13, 2017, which denied payment of a bill for an office visit with Dr. Allen on March 30, 2017. In its Order, the claims administrator stated that the physician's bill from Dr. Allen was duplicative treatment because Ms. Karopchinsky was being treated by another physician for carpal tunnel syndrome.

The Office of Judges determined that May 5, 2011, is the date of last exposure in this claim. Ms. Karopchinsky had prior carpal tunnel release surgery performed on September 27, 2011. She continued to work following the surgery until August of 2016. In April of 2013, she

was placed in a modified sedentary position that was specifically created for her. The Office of Judges concluded that the evidence establishes that Ms. Karopchinsky's duties changed after May 5, 2011, and the subsequent ulnar neuropathy did not originate from duties prior to May 5, 2011. The Office of Judges relied upon the June, 7, 2017, report of Dr. Thrush. Dr. Thrush opined that Ms. Karopchinsky's condition was not related to the injury of May 5, 2011. As a result, the Office of Judges concluded that Ms. Karopchinsky's bilateral ulnar neuropathy is not a compensable secondary condition of the claim. In addressing medical treatment, the Office of Judges affirmed the claims administrator's Orders for treatment because such treatment was for a non-compensable diagnosis. In its Order dated October 10, 2017, the Office of Judges concluded that Ms. Karopchinsky has not established by a preponderance of the evidence that the requested treatment of left cubital tunnel release with ulnar nerve transportation and the office visit with Dr. Allen on March 30, 2015, are medically related and reasonably required for the compensable injury. Accordingly, the claims administrator's Orders dated April 13, 2017, were affirmed.

The Board of Review adopted the findings of fact of conclusions of law of the Office of Judges and affirmed its decision in a Final Order issued on March 26, 2018. After review, we agree with the conclusions of the Board of Review. The denial to add the diagnosis of bilateral ulnar neuropathy should be affirmed. The evidence of record also supports the finding by the Office of Judges that Ms. Karopchinsky has not established by a preponderance of the evidence that the requested treatment of left cubital tunnel release with ulnar nerve transposition and the office visit with Dr. Allen on March 30, 2015, are medically related and reasonably required for the compensable injury.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of any constitutional or statutory provision, nor is it clearly the result of erroneous conclusions of law, nor is it based upon a material misstatement or mischaracterization of the evidentiary record. Therefore, the decision of the Board of Review is affirmed.

Affirmed.

ISSUED: November 2, 2018

CONCURRED IN BY:
Chief Justice Margaret L. Workman
Justice Elizabeth D. Walker
Justice Paul T. Farrell sitting by temporary assignment
Justice Tim Armstead
Justice Evan H. Jenkins

Justice Allen H. Loughry II suspended and therefore not participating.