Ryan, Susanne

SCOPE OF REVIEW

Occupational disease and industrial injury as alternative theories

The issue of whether the worker's condition constituted an occupational disease was properly before the Board even though the only stated reason for rejection of the claim was that the condition was not the result of an industrial injury. The Department had an opportunity to determine whether the claim was allowable as an occupational disease, the worker amended her notice of appeal to include an occupational disease theory, and the employer had the opportunity to meet the occupational disease issue by way of a CR 35 examination. **….*In re Susanne Ryan*, BIIA Dec., 46,094 (1977)** [dissent]

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: SUSANNE G. RYAN	**)**	**DOCKET NO. 46,094**
	)	
CLAIM NO. G-725214	**)**	**DECISION AND ORDER**

APPEARANCES:

Claimant, Susanne G. Ryan, by
Skeel, McKelvy, Henke, Evenson and Bettis, per
Douglas S. Dunham

Employer, Piehler, Allerdice and Boyack, by
Wayne Boyack

Department of Labor and Industries, by
The Attorney General, per
Richard Roth and Gayle Barry, Assistants

This is an appeal filed by the claimant on September 22, 1975, from an order of the Department of Labor and Industries dated August 11, 1975, which rejected her claim for the stated reason that the "claimant's condition is not the result of an industrial injury as defined by the Workmen's Compensation Act." **REVERSED AND REMANDED**.

DECISION

Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision on a timely joint Petition for Review filed by the Department of Labor and Industries and the employer to a Proposed Decision and Order issued by a hearing examiner for this Board on December 21, 1976, in which the order of the Department dated August 11, 1975 was reversed, and the claim remanded to the Department with direction to allow the claim and for such other and further action as may be authorized or required by law.

The Board has reviewed the evidentiary rulings of the hearing examiner and finds that no prejudicial error was committed and said rulings are hereby affirmed.

The issue presented by this appeal and the evidence presented by the parties are quite adequately set forth in our hearing examiner's Proposed Decision and Order. We agree with his proposed disposition in ordering allowance of the claim.

From our review of the record, we are convinced that the preponderance of the evidence establishes that the claimant's tendonitis in her right wrist, first diagnosed on March 25, 1975, was caused by the particular conditions in claimant's employment as a secretary-typist, over the period of several weeks preceding that date and subsequent thereto. We accept the opinions of Dr.

Samuel Browning, claimant's attending physician, who had ample opportunity to observe the progress of her condition and thus give validity to his opinion. The other medical witness, Dr. A. B. Gray, did not examine claimant's wrist until some fifteen months after the condition had developed, and which condition had apparently completely healed by the time of his examination. Clearly, we must give greater weight to the testimony of Dr. Browning in this case. Further, we are not persuaded by Department's counsel's argument that Dr. Browning was not fully aware of claimant's off-the-job activities, such as bowling one evening a week, some knitting handwork, and some alleged increased use of a family manual-shift automobile. Dr. Browning was made aware of these things, particularly the occasional bowling, but remained quite persistent in his view that claimant's substantial typing tasks in her work precipitated the wrist tendonitis which he treated. Nor are we persuaded that the purported wrist-straining activities off the job were as extensive or repetitive as one of the employer's witnesses -- another secretary -- would have us believe.

Department's and employer's counsel also contend that an amendment to claimant's notice of appeal to include an occupational disease allegation should not have been granted by the hearing examiner; the argument being that the claimant was strictly limited to the issue of industrial "injury" as raised when the Notice of Appeal was filed. We do not agree, and specifically refer to the Board Rules of Practice and Procedure, WAC 263-12-080, providing in part that "Any party may amend his Notice of Appeal on such terms as a hearing examiner may prescribe,...." The record discloses the amendment to include "occupational disease" was granted, and subsequently the employer was given reasonable opportunity to meet such issue by way of a CR Rule 35 medical examination, which was done by Dr. Gray.

Furthermore, it is a matter of common knowledge that the Department has only one kind of "claim" form to be submitted to it -- consisting of the workman's portion, the physician's portion, and an employer's report to be detached and submitted separately -- and such form is routinely used whether the claim is one for "injury" and/or "occupational disease." These two compensable situations are of course very different in their statutory definitions and basis for compensability, and there are many administrative and legal reasons for keeping the concepts separate. However, the workman's filing of the claim is not one of such reasons, for the workman has no obligation to make any binding election between the two. We all know that in many cases the Department will reject a claim on the two specific grounds that there was no injury, and neither was there an occupational disease. Upon filing of this particular claim, the Department obviously had the opportunity, by the

very nature of the case, to determine whether there was an allowable injury and/or an occupational disease. Indeed, the Department's form order used in this case implicitly recognized this by its printed statement that "This claim for benefits for injury, accident or occupational disease is rejected because..."

We conclude that the occupational disease issue is properly put before us in this appeal; and we further conclude that claimant's right wrist tendonitis, having been shown to have arisen naturally and proximately out of her particular employment herein, is compensable as an occupational disease under RCW 51.08.140.

Conclusion No. 2 in the Proposed Decision and Order is renumbered to Conclusion No. 3, and a new Conclusion No. 2 is made as follows:

> 2. The tendonitis which developed in the claimant's right wrist, and first diagnosed as such on March 25, 1975, was an occupational disease within the meaning of the Workmen's Compensation Act.

The hearing examiner's proposed findings, conclusions as above amended, and order, are hereby adopted as this Board's findings, conclusions and order and are incorporated herein by this reference.

It is so ORDERED.

Dated this 22nd day of July, 1977.

BOARD OF INDUSTRIAL INSURANCE APPEALS
/s/
PHILLIP T. BORK Chairman
/s/
SAM KINVILLE Member

DISSENTING OPINION

I cannot accept the theory that this claimant's right wrist condition was related to her employment. I concur in the views expressed by Dr. Gray that it would be highly unusual for this experienced secretary-typist to develop tendonitis from her typing tasks, and that other causes besides typing were responsible for her wrist complaints.

Accordingly, I would sustain the Department's rejection of the claim, and I dissent from the Board's majority decision.

Dated this 22nd day of July, 1977.

/s/
WILLIAM C. JACOBS Member