Benson, Roy

SCOPE OF REVIEW

Occupational disease and industrial injury as alternative theories

Where the worker has consistently alleged that his carpal tunnel syndrome is the result of a specific injury, the Board is without authority to allow the condition as an occupational disease resulting from the repetitive use of the hand in daily work activities. **….*In re Roy Benson*, BIIA Dec., 53,294 (1980)**

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: ROY D. BENSON	**)**	**DOCKET NO. 53,294**
	)	
CLAIM NO. G-942736	**)**	**DECISION AND ORDER**

APPEARANCES:

Claimant, Roy D. Benson, by
Bennion, VanCamp, Watts, Hagan & Ruhl, per
W. Russell VanCamp

Employer, Quiki Box Manufacturing Company,
None

Department of Labor and Industries, by
The Attorney General, per
Gary D. Keehn, Assistant

This is an appeal filed by the claimant on December 7, 1978 from an order of the Department of Labor and Industries dated October 10, 1978 which adhered to a prior order closing the claim with no permanent partial disability and denying responsibility for any right ulnar nerve and/or right median nerve condition. **AFFIRMED**.

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 Petition for Review filed by the Department of Labor and Industries to a Proposed Decision and Order issued by a hearing examiner for this Board on November 5, 1979 in which the order of the Department dated October 10, 1978 was reversed, and the matter remanded to the Department of Labor and Industries with directions to allow the claimant's right ulnar nerve condition as an industrial injury, and to further allow his right medial nerve condition as an occupational disease.

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 general nature and background of this appeal are as set forth in the hearing examiner's Proposed Decision and Order and shall not be reiterated herein.

Based upon the testimony of Dr. Alex R. Verhoogen, the hearing examiner finds that the claimant's right ulnar nerve condition resulted from his industrial injury of September 1, 1976. The record will not support this finding.

Dr. Verhoogen's opinion of causal relationship is based upon his postulation that the claimant fell to the ground in an unconscious state and struck his right elbow on September 1, 1976. There is absolutely no evidence whatsoever that the claimant fell to the ground, let alone struck his elbow or elbows during the course of the September 1, 1976 accident. On direct examination, the claimant testified as to the details of his September 1, 1976 accident as follows:

"Q Would you describe as best you can the injury that we talked about here with regards to September, when you were knocked out, and describe to the court as best you can what happened.

A I was a maintenance man at Quiki Box Manufacturing Company, I was ordered to take a fork lift inside the maintenance shop and repair the overhead safety cage. As I was pulling into the shop, the cage fell down on me, on the back of my head, knocked me out, and draped me over the steering wheel. I can't say exactly how long I was out, because I don't know, but one of the fellows in the shop came up and got me off the forklift."

On cross-examination, the claimant testified as follows:

"Q You stated you were on the forklift when you were struck on the back of the head.

A True.

Q Then when you regained consciousness you were draped over, would that be the steering wheel of the forklift?

A Yes, that's true."

The basis for Dr. Verhoogen's opinion of causal relationship between the injury of September 1, 1976 and the ulnar nerve condition was elicited on recross-examination as follows:

"Q As I understand your last testimony, the direct trauma received to the back of the head in your opinion would not cause -- strike that – the direct trauma received by Mr. Benson on September 1, 1976 in and of itself would have not caused the carpal tunnel syndrome and the tardy ulnar nerve palsy?

A The carpal tunnel syndrome would be harder to say it was due to the accident. The tardy ulnar nerve palsy very easily could be. This man was knocked out, falls to the floor, who knows that he struck his elbow on as he falls and so on, afterwards he's got a terrible headache, he's

not worried about his elbow, he's been knocked out. This is a very prominent phenomenon.

Q But the history given to you did not concern any trauma to the elbow, did it?

A Correct. He said he was knocked out, which would imply he probably fell to the ground.

Q So you are speculating that he fell to the ground and hit his elbow, he could have just as well fell and not hit his elbow?

A Sure, and I related that to the Department...." (Emphasis supplied.)

As is apparent from the testimony quoted above of both the claimant and Dr. Verhoogen, the doctor's assumption that the claimant fell to the ground and struck his elbow or elbows is contrary to the claimant's own description of the accident. As stated in Parr v. Department of Labor and Industries, 46 Wn. 2d 144 (1955):

> "...A claimant does not prove ... causal relationship by the testimony of a doctor whose information is shown by the claimant's own testimony to be neither complete nor accurate."

In a word, Dr. Verhoogen's opinion of causal relationship between the claimant's accident of September 1, 1976 and the condition variously described as ulnar nerve condition or tardy ulnar nerve palsy has no probative value.

As for the condition described as carpal tunnel syndrome (right median nerve condition), Dr. Verhoogen was unable to relate this condition to the claimant's accident of September 1, 1976. He did, however, express the opinion that this condition was related to the claimant's work on the basis of repetitive trauma over a period of time -- i.e., repetitive use by the claimant of his right hand in his daily work activities. The hearing examiner allowed the condition as an occupational disease on the basis of repetitive trauma.

In our opinion, to allow the claimant's carpal tunnel syndrome as an occupational disease under a repetitive injury or trauma theory transcends the Board's jurisdiction. Throughout the history of this claim before the Department, the claimant alleged that the causative trauma responsible for his carpal tunnel syndrome was his accident of September 1, 1976. In this regard, in addition to the original report submitted to the Department on September 14, 1976, the claimant submitted two subsequent accident reports. In all three accident reports, the claimant listed the date of injury as September 1, 1976, and described the injury as: "Forklift safety cage fell on my head as I was driving the fork-lift into the shop for repairs." At no time did the claimant allege or

claim before the Department that his carpal tunnel syndrome was due to repetitive work activities. Even in his notice of appeal, the claimant alleged:

> "...The nature of the injury is damage to the right ulnar nerve and right median nerve due to being struck in the head while working on a forklift at work..."

There has been no prior determination by the Department as to whether the claimant's carpal tunnel syndrome is related to stressful repetition on the job. All along, the claimant's contention to the Department was that his carpal tunnel syndrome condition was due to his traumatic accident of September 1, 1976. Given this posture of the claim, it was incumbent upon the Department to determine if the claimant's carpal tunnel syndrome constituted a compensable condition, either as an injury or an occupational disease, as a result of the accident of September 1, 1976. It was not incumbent upon the Department to determine, nor could it be expected to determine, whether the claimant's carpal tunnel syndrome constituted an injury or an occupational disease as the result of some other traumatic incident or repetitive physical stress.

It is well settled that the questions the Board may consider and decide are fixed by the Department order from which an appeal is taken, as limited by the issues raised by the notice of appeal. Lenk v. Department of Labor & Industries, 3 Wn. App. 977 (1970). In our opinion, this Board has no authority to decide, in the first instance, that the claimant's carpal tunnel syndrome resulted from any other traumatic incident or incidents other than the alleged traumatic incident of September 1, 1976.

FINDINGS OF FACT

Finding No. 1 of the Proposed Decision and Order entered herein is hereby adopted by the Board and incorporated herein by this reference. Findings Nos. 2 and 3 thereof are hereby stricken, and the Board makes the following findings:

2. The claimant's right tardy ulnar nerve condition did not result from his industrial accident of September 1, 1976.

3. The claimant's carpal tunnel syndrome condition did not result from his industrial accident of September 1, 1976.

CONCLUSIONS OF LAW

1. The Board has jurisdiction of the parties and the subject matter of this appeal.

2. The order of the Department of Labor and Industries dated October 10, 1978, which adhered to the provisions of a prior order dated September 21, 1978, denying responsibility for any right ulnar nerve and/or right median nerve condition is correct, and should be affirmed.

It is so ORDERED.

Dated this 28th day of May, 1980.

BOARD OF INDUSTRIAL INSURANCE APPEALS

/s/
MICHAEL L. HALL Chairman

/s/
AUGUST P. MARDESICH Member