

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*, BIA Dec., 53,294 (1980)

Scroll down for order.

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

1 **IN RE: ROY D. BENSON**) **DOCKET NO. 53,294**
2)
3 **CLAIM NO. G-942736**) **DECISION AND ORDER**
4

5 **APPEARANCES:**

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

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11 Employer, Quiki Box Manufacturing Company,
12 None

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14 Department of Labor and Industries, by
15 The Attorney General, per
16 Gary D. Keehn, Assistant
17

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

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24 **DECISION**

25 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review
26 and decision on a timely Petition for Review filed by the Department of Labor and Industries to a
27 Proposed Decision and Order issued by a hearing examiner for this Board on November 5, 1979 in
28 which the order of the Department dated October 10, 1978 was reversed, and the matter remanded
29 to the Department of Labor and Industries with directions to allow the claimant's right ulnar nerve
30 condition as an industrial injury, and to further allow his right medial nerve condition as an
31 occupational disease.

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

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

1 Based upon the testimony of Dr. Alex R. Verhoogen, the hearing examiner finds that the
2 claimant's right ulnar nerve condition resulted from his industrial injury of September 1, 1976. The
3 record will not support this finding.
4

5 Dr. Verhoogen's opinion of causal relationship is based upon his postulation that the
6 claimant fell to the ground in an unconscious state and struck his right elbow on September 1,
7 1976. There is absolutely no evidence whatsoever that the claimant fell to the ground, let alone
8 struck his elbow or elbows during the course of the September 1, 1976 accident. On direct
9 examination, the claimant testified as to the details of his September 1, 1976 accident as follows:
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11 "Q Would you describe as best you can the injury that we talked about here
12 with regards to September, when you were knocked out, and describe to
13 the court as best you can what happened.
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15 A I was a maintenance man at Quiki Box Manufacturing Company, I was
16 ordered to take a fork lift inside the maintenance shop and repair the
17 overhead safety cage. As I was pulling into the shop, the cage fell down
18 on me, on the back of my head, knocked me out, and draped me over
19 the steering wheel. I can't say exactly how long I was out, because I
20 don't know, but one of the fellows in the shop came up and got me off
21 the forklift."
22

23 On cross-examination, the claimant testified as follows:
24

25 "Q You stated you were on the forklift when you were struck on the back of
26 the head.
27

28 A True.
29

30 Q Then when you regained consciousness you were draped over, would
31 that be the steering wheel of the forklift?
32

33 A Yes, that's true."
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35 The basis for Dr. Verhoogen's opinion of causal relationship between the injury of September
36 1, 1976 and the ulnar nerve condition was elicited on recross-examination as follows:
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38 "Q As I understand your last testimony, the direct trauma received to the
39 back of the head in your opinion would not cause -- strike that -- the
40 direct trauma received by Mr. Benson on September 1, 1976 in and of
41 itself would have not caused the carpal tunnel syndrome and the tardy
42 ulnar nerve palsy?
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44 A The carpal tunnel syndrome would be harder to say it was due to the
45 accident. The tardy ulnar nerve palsy very easily could be. This man
46 was knocked out, falls to the floor, who knows that he struck his elbow
47 on as he falls and so on, afterwards he's got a terrible headache, he's

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

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

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

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

10 A Sure, and I related that to the Department...." (Emphasis supplied.)
11

12 As is apparent from the testimony quoted above of both the claimant and Dr. Verhoogen, the
13 doctor's assumption that the claimant fell to the ground and struck his elbow or elbows is contrary
14 to the claimant's own description of the accident. As stated in Parr v. Department of Labor and
15 Industries, 46 Wn. 2d 144 (1955):
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18 "...A claimant does not prove ... causal relationship by the testimony of a
19 doctor whose information is shown by the claimant's own testimony to
20 be neither complete nor accurate."
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22 In a word, Dr. Verhoogen's opinion of causal relationship between the claimant's accident of
23 September 1, 1976 and the condition variously described as ulnar nerve condition or tardy ulnar
24 nerve palsy has no probative value.
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27 As for the condition described as carpal tunnel syndrome (right median nerve condition), Dr.
28 Verhoogen was unable to relate this condition to the claimant's accident of September 1, 1976. He
29 did, however, express the opinion that this condition was related to the claimant's work on the basis
30 of repetitive trauma over a period of time -- i.e., repetitive use by the claimant of his right hand in his
31 daily work activities. The hearing examiner allowed the condition as an occupational disease on
32 the basis of repetitive trauma.
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36 In our opinion, to allow the claimant's carpal tunnel syndrome as an occupational disease
37 under a repetitive injury or trauma theory transcends the Board's jurisdiction. Throughout the
38 history of this claim before the Department, the claimant alleged that the causative trauma
39 responsible for his carpal tunnel syndrome was his accident of September 1, 1976. In this regard,
40 in addition to the original report submitted to the Department on September 14, 1976, the claimant
41 submitted two subsequent accident reports. In all three accident reports, the claimant listed the
42 date of injury as September 1, 1976, and described the injury as: "Forklift safety cage fell on my
43 head as I was driving the fork-lift into the shop for repairs." At no time did the claimant allege or
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1 claim before the Department that his carpal tunnel syndrome was due to repetitive work activities.
2 Even in his notice of appeal, the claimant alleged:

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4 "...The nature of the injury is damage to the right ulnar nerve and right
5 median nerve due to being struck in the head while working on a forklift
6 at work..."
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8 There has been no prior determination by the Department as to whether the claimant's carpal
9 tunnel syndrome is related to stressful repetition on the job. All along, the claimant's contention to
10 the Department was that his carpal tunnel syndrome condition was due to his traumatic accident of
11 September 1, 1976. Given this posture of the claim, it was incumbent upon the Department to
12 determine if the claimant's carpal tunnel syndrome constituted a compensable condition, either as
13 an injury or an occupational disease, as a result of the accident of September 1, 1976. It was not
14 incumbent upon the Department to determine, nor could it be expected to determine, whether the
15 claimant's carpal tunnel syndrome constituted an injury or an occupational disease as the result of
16 some other traumatic incident or repetitive physical stress.
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18 It is well settled that the questions the Board may consider and decide are fixed by the
19 Department order from which an appeal is taken, as limited by the issues raised by the notice of
20 appeal. Lenk v. Department of Labor & Industries, 3 Wn. App. 977 (1970). In our opinion, this
21 Board has no authority to decide, in the first instance, that the claimant's carpal tunnel syndrome
22 resulted from any other traumatic incident or incidents other than the alleged traumatic incident of
23 September 1, 1976.
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25 **FINDINGS OF FACT**

26 Finding No. 1 of the Proposed Decision and Order entered herein is hereby adopted by the
27 Board and incorporated herein by this reference. Findings Nos. 2 and 3 thereof are hereby
28 stricken, and the Board makes the following findings:
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- 30 2. The claimant's right ulnar nerve condition did not result from his
31 industrial accident of September 1, 1976.
- 32 3. The claimant's carpal tunnel syndrome condition did not result from his
33 industrial accident of September 1, 1976.

34 **CONCLUSIONS OF LAW**

- 35 1. The Board has jurisdiction of the parties and the subject matter of this
36 appeal.
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1 2. The order of the Department of Labor and Industries dated October 10,
2 1978, which adhered to the provisions of a prior order dated September
3 21, 1978, denying responsibility for any right ulnar nerve and/or right
4 median nerve condition is correct, and should be affirmed.
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6 It is so ORDERED.
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8 Dated this 28th day of May, 1980.
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10 BOARD OF INDUSTRIAL INSURANCE APPEALS

11 /s/
12 MICHAEL L. HALL Chairman
13

14 /s/
15 AUGUST P. MARDESICH Member
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