

STATE OF MICHIGAN
WORKER'S COMPENSATION APPELLATE COMMISSION

CHRISTINE DEHATE,
PLAINTIFF,

V

DOCKET #99-0414

PAYLESS SHOESOURCE, INCORPORATED AND
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA,
DEFENDANTS.

APPEAL FROM MAGISTRATE SLOSS.

ROBERT S. STRAGER FOR PLAINTIFF,
MICHAEL T. REINHOLM FOR DEFENDANTS.

OPINION

SKOPPEK, CHAIRPERSON

Defendants appeal the decision of Magistrate Andrew G. Sloss, mailed August 9, 1999, granting plaintiff an open award of compensation benefits on a finding of an ongoing bilateral tenosynovitis disability contributed to by plaintiff's employment activities at Payless Shoe Source. We affirm the magistrate's decision.

Plaintiff commenced her employment with Payless in September of 1995, performing cash register, unloading and shelving duties under the rubric "Sales Associate." She started having problems with her right thumb in January of 1996 and her complaints escalated beginning in March of 1997. Plaintiff's doctor took her off work for one week on May 16, 1997, but plaintiff never returned to work after that. She testified that she did not believe she could return to work because of her bilateral wrist pain and tingling, as well as limited movement.

Magistrate Sloss, after reviewing the lay testimony and the deposition opinions of three medical experts (Drs. Jerry A. Taylor and Michael E. Tofteland for plaintiff, Dr. Rajesh Bhagat for defendants), concluded that plaintiff had met her burden of proving an ongoing work-related compensable disability. The magistrate found as follows:

In this case, the medical experts agree that Plaintiff suffers from deQuervain's tenosynovitis bilaterally. Plaintiff's experts contend that this condition was caused by, contributed to, or aggravated by the repetitive gripping and grasping motions required by her work duties for Defendant. Defendant's expert, on the other hand, basically

contends that this condition is idiopathic, and could therefore not have been caused by any sort of work activity.

I adopt the opinion of Dr. Tofteland, Plaintiff's treating physician, and conclude that Plaintiff has established, by a preponderance of the evidence, that her condition was caused or aggravated by her employment by Defendant. Plaintiff had no symptomology prior to beginning her employment for Defendant, and I find that her job for Defendant involved a significant amount of repetitive motions with her wrist. It is logical that the unaccustomed use or overuse of her hands caused this condition, as theorized by Dr. Tofteland and Dr. Taylor. I reject the opinion of Dr. Bhagat that this type of tenosynovitis cannot be caused by work activities. That the condition continued after she ceased employment indicates to me that the work activities aggravated her underlying pathology, rather than merely her symptomology. Accordingly, I find that Plaintiff has met her burden of proving, by a preponderance of the evidence, that she sustained a work-related personal injury in the nature of deQuervain's tenosynovitis. I find that she has failed to establish by a preponderance of the evidence that she has mild bilateral carpal tunnel syndrome, or that this condition was caused by her work.

Both Dr. Tofteland and Dr. Taylor testified that Plaintiff is disabled from returning to her former employment with Defendant. Dr. Taylor outlined specific restrictions that would preclude her from lifting over five pounds or from frequent lifting with either hand. The testimony indicated, and I find as fact, that Plaintiff's work duties for Defendant required her to lift over five pounds regularly, and that they also required her to lift frequently. She has therefore established that she has a limitation of her wage-earning capacity and is disabled as defined by the act.

The nature of Plaintiff's injury is cumulative trauma, therefore I find as fact that she has established an injury date of May 15, 1997, her last day of work for Defendant.

On appeal, defendants argue that the magistrate erred in his assessment of the proofs. They suggest that the magistrate failed to recognize the distinction between complaints based on repetitive motion of the thumb, which plaintiff allegedly did not experience, and repetitive motion of the wrist, which is not a contributor to deQuervain's tenosynovitis. They also suggest that a more careful examination of plaintiff's job duties at Payless reveals that she did not lose the ability to perform her job there. We believe that this refined focus on the evidence, presented in order to effect a different interpretation of the proofs, is not persuasive in light of our standard of review.

The magistrate recognized that Dr. Tofteland had focused on repetitive motion of the thumb for his medical diagnosis. The doctor opined that plaintiff's job activities aggravated plaintiff's condition. Plaintiff provided testimony indicating repetitive motion, including with the thumb. The magistrate used the terms "thumb" and "wrist" in the context of plaintiff's overall complaints of pain

and the general pattern of repetitiveness that plaintiff experienced in her job duties, and the distinction which defendants propose makes too fine a point out of the utilization of the two terms. The essential testimony by plaintiff and her treating physician is present to affirm the finding of work-relationship. Defendants may feel that plaintiff's job duties were not truly very hand and wrist intensive, either in the pattern of activity or in duration, but the magistrate's judgment to the contrary is not so unreasonable as to defy the great weight of the record.

Likewise, although defendants in their brief craft a description of plaintiff's job activities that could fall within her need for restrictions, the magistrate's assessment of plaintiff's ability to perform her job with Payless, especially in light of her broad complaints of pervading wrist pain, is not unsustainable on the record presented at hearing. After examining the proofs presented and the magistrate's interpretation of those proofs, we conclude that his determination has the requisite support for our affirmance. MCL 418.861a(3).

Commissioners Leslie and Martell concur.

Jürgen Skoppek, Chairperson

Richard B. Leslie

Marie E. Martell

Commissioners

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This cause came before the Appellate Commission on appeal by defendants from the decision of Magistrate Andrew G. Sloss, mailed August 9, 1999, granting plaintiff an open award of benefits. The Commission has considered the record and briefs of counsel, and believes that the magistrate's decision should be affirmed. Therefore,

IT IS ORDERED that the decision of the magistrate is affirmed.

Jürgen Skoppek, Chairperson

Richard B. Leslie

Marie E. Martell

Commissioners