

2022 WL 739190 (N.Y.Work.Comp.Bd.)

Workers' Compensation Board

State of New York

EMPLOYER: AMERICAN NATIONAL RED CROSS

Case No. G248 8597

Carrier ID No. TN120243 W166003

March 7, 2022

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Date of Accident 12/19/2019

The Full Board, at its meeting held on February 15, 2022, considered the above captioned case for Mandatory Full Board Review of the Board Panel Memorandum of Decision filed November 10, 2021.

ISSUE

The issue presented for Mandatory Full Board Review is whether this claim should be amended to include bilateral [carpal tunnel syndrome](#) (CTS).

The Workers' Compensation Law Judge (WCLJ) found that there was insufficient evidence that claimant's CTS was causally related.

The Board Panel majority disagreed and established the claim for bilateral CTS.

The dissenting Board Panel member would disallow the claim for CTS.

The carrier filed an application for Mandatory Full Board Review on December 10, 2021. In its application for Mandatory Full Board Review, the carrier argues that the claim for bilateral CTS was properly disallowed. The carrier contends that the opinion of claimant's treating physician, Dr. Tetro, is not credible.

The claimant filed a rebuttal on January 10, 2022, arguing that the credible opinion of Dr. Tetro supports the finding of the Board Panel majority that her bilateral CTS is causally related to the December 19, 2019, accident.

Upon review, the Full Board votes to adopt the following findings and conclusions.

FACTS

Claimant, a phlebotomist, was involved in a work-related motor vehicle accident on December 19, 2019. The initial medical reports following the accident reference injuries to claimant's neck and left shoulder.

A physical therapy note dated January 28, 2020, states that claimant was seen “for complaints of constant pain in LT upper trap which travels down to medial scapula, frequent neck stiffness, occasional tingling down LT UE to fingers, frequent headaches (approx. 4 days/week).” Claimant reported that her pain was “7-9/10 on a VAS pain scale.”

In a February 19, 2020, report, claimant's treating physician, Dr. Bagnall, noted that claimant had initially complained of pain in the base of her neck on the left side which radiated into her left shoulder, and had “since developed periodic symptoms [in] her left upper limb and hand.”

Claimant treated in the emergency room on March 1, 2020, for worsening neck pain. The emergency room report states that claimant “[d]enies any numbness, tingling, weakness in extremity.”

In a March 23, 2020, report, claimant's treating physician, Dr. DenHaese, noted that claimant “complains of electrical shock sensations in her arms and hands as well as weakness.”

In a March 27, 2020, report, claimant's treating chiropractor, Dr. Syracuse, stated that claimant presented “with symptoms of numbness and tingling sensation that radiates into the left shoulder into the left elbow and left hand since December 19, 2019. There is neck pain and left shoulder pain. There is weakness in the left upper extremity. There is weakness in both hands especially when gripping objects.” Dr. Syracuse found positive Tinel's sign and Phalen's test bilaterally, and found that claimant's history, clinical symptoms, and electrophysiological testing indicate “that she exhibits evidence of bilateral [median neuropathy](#) in the region of the right and left wrists affecting the motor fibers only.” Dr. Syracuse recommended that claimant undergo “[a]n orthopedic/hand consult.”

*2 In an April 2, 2020, report, claimant's treating physician, Dr. Tetro, indicated that claimant was being seen via a telemedicine assessment for pain and numbness in both hands. Dr. Tetro noted a history of claimant having “sustained injury to the bilateral hand, cervical spine,” in the December 19, 2019, motor vehicle accident, and that she did not have any “significant history of bilateral hand/wrist pain until the time of the accident.” Based on the history provided by claimant, his telemedicine assessment of the claimant, and a review of the electrodiagnostic studies performed by Dr. Syracuse, Dr. Tetro diagnosed bilateral CTS and bilateral hand diffuse flexor [tenosynovitis](#), and noted that claimant had uncontrolled [type 2 diabetes](#). Dr. Tetro concluded that “[g]iven the mechanism of injury we feel that her bilateral wrist/hand injury would because only [sic] related to the motor vehicle accident which occurred while the patient was working and therefore should be treated under WCB.”

In a May 12, 2020, report, Dr. Tetro indicated that claimant was being seen for a follow-up telemedicine consultation. The history, diagnoses, and causal relationship opinion reflected in Dr. Tetro's May 12, 2020, report are not meaningfully different from those in his April 2, 2020, report.

The WCLJ, in a decision filed June 24, 2020, established the claim for injuries to claimant's neck and left shoulder, set her average weekly wage at \$635.15 without prejudice, and made awards. The WCLJ also found that “there is sufficient medical evidence to move forward on the issue of bilateral [Carpal Tunnel Syndrome](#) based upon the report of Dr. Tetro dated May 12, 2020,” and continued the case.

Claimant was examined by the carrier's consultant, Dr. Nunez, on July 7, 2020. In his report, Dr. Nunez noted that claimant has had [diabetes mellitus](#) for 13 years and has been taking [insulin](#) for five years. Dr. Nunez wrote:

The issue for today is whether the [carpal tunnel](#) complaints are causally related. In order for a condition to be causally related to an accident, three conditions must be met.

1. There must be a logical explanation for the condition.
2. There must be contemporaneous reporting of the complaints.
3. There could be no other conditions that would explain the pathology.

Regarding the mechanism of injury, she was seat belted and had a hand on the steering wheel. While it is theoretically possible that could have caused trauma to the median nerves, there was no contemporaneous reporting of that condition. Therefore, that second condition is not met and finally there can be no other explanation. The claimant has had [diabetes mellitus](#) for the past 13 years and that is well known to be associated with [carpal tunnel syndrome](#), so there is definitely another explanation for her condition. Therefore, I cannot find causality between the [carpal tunnel syndrome](#) and the accident of this file.

*3 Claimant declined to depose Dr. Nunez.

Dr. Tetro was deposed on October 27, 2020, and testified that claimant first treated at his practice on April 20, 2020. Dr. Tetro reviewed nerve studies performed by Dr. Syracuse, which were consistent with CTS. Based on the initial examination of the claimant, which was a telemedicine visit, Dr. Tetro's "working diagnoses or assessment included bilateral [carpal tunnel syndrome](#)" (Deposition Transcript, 10/27/20, p. 7). Concerning claimant's bilateral CTS, Dr. Tetro testified:

Based upon the history we obtained from the patient being the driver of a motor vehicle involved in a rear-end collision with both hands on the steering wheel and given the nature of her onset of symptoms being subsequent to the motor vehicle accident, in the absence of any prior symptoms prior to the motor vehicle accident and the absence of any other contributing factors, it was our opinion that the onset of symptoms was causally related to the trauma of the motor vehicle accident....

(p. 9). Dr. Tetro testified that claimant was last seen on June 4, 2020, "and at that point we actually mutually agreed that her symptoms were not as severe as they once were and she thought that she could live with her symptoms the way they were. If they were to return or increase in the future she would give us a call" (pp. 9-10). According to Dr. Tetro, CTS often occurs in drivers who are involved in a motor vehicle accident, and who are injured as the result of forcefully gripping the steering wheel when impact occurs. The majority of such patients he sees are initially treated by a chiropractor or spine surgeon for [cervical spine injuries](#), and the injury to the patient's hands is not initially detected, thereby delaying treatment. The EMG clearly showed changes in the nerve function of claimant's wrists. However, according to Dr. Tetro, the question "that we can't completely answer is, is the numbness and tingling that bothers her, is it more due to the neck, more due to the wrist or is it both, which includes what's called a double-crush syndrome" (p. 12). Dr. Tetro further testified that it is "really hard to know how much is neck versus how much is hands. Certainly the hands are a component, but I think the neck is also there too" (p. 14).

On cross-examination, Dr. Tetro testified that it was his understanding that claimant began to experience numbness and tingling "within days to a few weeks after the accident," but it was unclear whether these were "cervical versus hand-related symptoms" (p. 20). Dr. Tetro explained that it is "documented in the hand surgery literature" that individuals who are involved in motor vehicle accidents while holding the steering wheel can sustain "post-traumatic flexor [tenosynovitis](#) or [tendonitis](#)," which compresses the median nerve and causes CTS (p. 21). Dr. Tetro believed that claimant's CTS symptoms were the direct result of the motor vehicle accident, and were not causally related to claimant's [diabetes](#). According to Dr. Tetro, while there is some correlation between [diabetes](#) and CTS, [diabetes](#) does not cause CTS. That claimant's CTS symptoms did not appear until after the motor vehicle accident suggests that her CTS was caused by the accident.

*4 By an amended decision filed November 13, 2020, the WCLJ found that "evidence showed the claimant has [carpal tunnel syndrome](#), but there was not sufficient credible evidence to show the [carpal tunnel syndrome](#) was causally related."

The claimant requested administrative review, arguing that the record supports a finding that her CTS was causally related to the December 19, 2019, accident.

In rebuttal, the carrier argued that the claim for bilateral CTS was properly disallowed.

LEGAL ANALYSIS

“[A] medical opinion on the issue of causation must signify a probability as to the underlying cause of the claimant's injury which is supported by a rational basis. While the Board may rely upon a medical opinion as to causation even if it is not absolute or made with medical certainty, the Board may not fashion a medical opinion of its own, nor may it rely upon a medical opinion that is purely speculative rather than demonstrating a reasonable probability as to the cause of an injury” (Matter of [Norton v North Syracuse Cent. School Dist.](#), 59 AD3d 890 [2009] [internal quotation marks and citations omitted]).

Here, Dr. Tetro credibly found that claimant's CTS was causally related to her December 19, 2019, accident. Dr. Tetro testified that CTS often occurs in drivers who are involved in a motor vehicle accident, and who are injured as the result of forcefully gripping the steering wheel when impact occurs. In finding causal relationship, Dr. Tetro relied on the fact that the onset of claimant's symptoms was after the accident, and that she had no symptoms previously.

The carrier argues that the credibility of Dr. Tetro's opinion is undermined because it was based on an inaccurate history. Dr. Tetro testified that he believed that claimant began to experience numbness and tingling in her hands “within days to a few weeks after the accident,” and the carrier contends that this is contradicted by the medical record because there is no mention of hand symptoms in any of the medical reports prior to Dr. DenHaese's initial report, dated March 23, 2020. However, contrary to the carrier's assertion, a January 28, 2020, physical therapy note reported that claimant was experiencing tingling down into the fingers of her left hand, and Dr. Bagnall stated in his February 19, 2020, report that claimant complained of pain in “her left upper limb and hand.” Moreover, there are only a handful of earlier reports in the record, none of which provide a detailed narrative description of claimant's symptoms, and it is plausible that those reports failed to note any symptoms in claimant's hands because treatment was focused on claimant's neck and shoulder injuries, which were causing her significant pain. Thus, that the earliest medical reports in the record do not mention any symptoms in claimant's hands does not support the conclusion, argued by the carrier, that claimant was not experiencing such symptoms earlier than the medical record reflects.

*5 What is clear from the record is that the symptoms of bilateral CTS are clearly noted in the medical record in the months following the accident, and there is no credible evidence that the condition was the result of any intervening cause. While Dr. Nunez and Dr. Tetro both note that there was some documented correlation between CTS and [diabetes](#), Dr. Tetro credibly explained that [diabetes](#) does not cause CTS, and that claimant's CTS was the result of her accident, not her diabetic condition.

Therefore, the Full Board finds that the preponderance of the credible evidence in the record supports a finding that claimant's bilateral CTS is causally related to her December 19, 2019, accident.

CONCLUSION

ACCORDINGLY, the WCLJ amended decision filed November 13, 2020, is MODIFIED to reflect that the claim is amended to include bilateral [carpal tunnel syndrome](#). The forms C-8.1 which raised issues relating to treatment and/or disputed medical bills are resolved in favor of the provider. This pertains to the Dr. Tetro C-8.1Bs received April 16, 2020, May 19, 2020, May 27, 2020, and June 18, 2020. The balance of the decision REMAINS IN EFFECT. No further action is planned at this time.

Clarissa Rodriguez
Chair

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