

2022 WL 739191 (N.Y.Work.Comp.Bd.)

Workers' Compensation Board

State of New York

EMPLOYER: NYC TRANSIT AUTHORITY

Case No. G258 1812

Carrier ID No. TA201901976 W848006

March 7, 2022

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Date of Accident //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 23, 2021.

ISSUE

The issue presented for Mandatory Full Board Review is whether claimant sustained an occupational disease involving bilateral [carpal tunnel syndrome](#) (CTS).

The Workers' Compensation Law Judge (WCLJ) disallowed the claim.

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

The dissenting Board Panel member would disallow the claim.

The self-insured employer (SIE) filed an application for Mandatory Full Board Review on December 20, 2021, arguing that the opinion of the dissenting Board Panel member should be adopted by the Full Board, and the claim disallowed.

The claimant filed a rebuttal on January 7, 2022, arguing that the record supports establishing this claim for bilateral CTS.

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

FACTS

Claimant filed a C-3 (Employee Claim) on July 24, 2019, alleging that he sustained injuries to both hands and wrists due to repetitive motion/stress in his job performing maintenance and repairs for the Transit Authority. Claimant alleged that his job involved “[l]ong hours pulling, pushing, and lifting heavy objects over time throughout the years.” Claimant indicated that he first sought treatment on June 28, 2019, with Dr. Lomita.

The SIE controverted the claim.

In a narrative report dated September 10, 2019, claimant's treating physician, Dr. Katzman, stated that claimant was complaining of pain in both hands, with occasional numbness and tingling. Dr. Katzman noted that claimant had previously undergone surgical removal of a tumor in his left hand and had [diabetes](#). He diagnosed bilateral CTS and indicated in the accompanying C-4 (Doctor's Initial Report) that the injuries were causally related to claimant's employment. In his report, Dr. Katzman described claimant's work duties:

The patient is a 63-year-old ambidextrous male who was working as a maintainer for MTA, cutting concrete for 12-14 years, 5-7 days a week, 8-16 hours a day. He noticed numbness and tingling in his hands approximately 7 years ago. He states that he does not participate in any sports or have any hobbies but does do some texting.

The WCLJ, in a decision filed April 17, 2020, found prima facie medical evidence for bilateral CTS, and continued the case.

*2 At a hearing on November 16, 2020, claimant testified that he retired on March 14, 2019. Prior to retiring he had worked for the transit authority for 22-and-a-half years doing masonry work. During his first few years he worked exclusively using a jackhammer. As he gained seniority he did other tasks, and in the last few years he did wiring. He worked all over the City of New York. He mostly worked inside the subway tunnels, using a jackhammer to break up concrete. He would use a jackhammer two to three hours per day. He continued to use a jackhammer throughout his career, as necessary, but also did other tasks, such as wiring. He would do wiring on and off, but “busting” concrete with a jackhammer was his main job. He would also use a shovel, sledgehammer and masonry tools at his job. He worked an eight-hour shift, ten to six, throughout his career. After breaking up the concrete he would have to clean it up, lifting larger pieces by hand and smaller pieces using a shovel, and putting them on a “train” to be removed. He first sought treatment for his hands the previous spring, before having a tumor removed from his left hand by Dr. Lomita. He then saw Dr. Katzman for CTS. On cross-examination, claimant testified that he never saw a doctor for his hands while he was still working. He was referred to Dr. Katzman by his attorney.

Dr. Lomita was deposed on January 13, 2021, and testified that he excised a [lipoma](#) on claimant's left hand on July 25, 2019. According to Dr. Lomita, “[lipomas](#) are idiopathic masses. They have no cause. They are just something that comes up” (Deposition Transcript, 1/13/21, p. 10).

Dr. Katzman was deposed on January 27, 2021, and testified that he is a board certified orthopedic surgeon and had done a fellowship in hand and upper extremity surgery. Dr. Katzman testified that activities with “a large vibrational component....are associated with causing [carpal tunnel syndrome](#)” (Deposition Transcript, 1/27/21, p. 13). Claimant's job involved cutting concrete and Dr. Katzman assumed that he used a jackhammer. Working with a jackhammer, which uses vibration, would be a competent cause of CTS. However, if claimant had used a saw to cut concrete, which involves the use of forced grip strength, that would also be a competent cause of CTS. Claimant has [diabetes](#). According to Dr. Katzman, there is some literature associating [diabetes](#) with CTS, but he did not “think [diabetes](#) causes [carpal tunnel](#) per se” (p. 15). He did not believe that [diabetes](#) “was [[claimant's] etiology” (p. 16). He also did not believe that the tumor on claimant's hand had anything to do with his CTS.

At the hearing on April 9, 2021, after listening to summations, the WCLJ disallowed the claim, finding that Dr. Katzman's reports did not contain “a level of detailed knowledge of the nature of the work performed that would be sufficient” (Hearing Transcript, 4/9/21, pp. 9-10). The findings made at the April 9, 2021, hearing are reflected in a decision filed April 23, 2021.

*3 Claimant requested administrative review, arguing that the record supports establishing this claim for bilateral CTS.

LEGAL ANALYSIS

To support a claim for an occupational disease, the claimant must demonstrate “a recognizable link between his or her condition and a distinctive feature of his or her employment” (*Matter of Camby v System Frgt., Inc.*, 105 AD3d 1237 [[2013] [internal quotation marks and citation omitted]; see *Matter of Bates v Marine Midland Bank*, 256 AD2d 948 [1998]) (*Matter of Jones v Consolidated Edison Co. of N.Y., Inc.*, 130 AD3d 1106 [2015]).

When the “medical opinion of claimant's treating physician [is] neither speculative nor a general expression of possibility and it ‘signif[ies] a probability as to the underlying cause of the claimant's injury which is supported by a rational basis’ (*Matter of Mayette v Village of Massena Fire Dept.*, 49 AD3d 920 [2008],” and when there is no conflicting medical evidence, the Board may not reject the treating physician's uncontroverted medical opinion on causation (*Matter of Maye v Alton Mfg., Inc.*, 90 AD3d 1177 [[2011] [additional internal citations omitted]). However, “[w]hile as a general rule the Board may not reject the unanimous opinion of experts and arrive at its own conclusion on the issue of causation (see *Matter of Van Patten v Quandt's Wholesale Distribs.*, 198 AD2d 539; *Matter of Doersam v Oswego County Dept. of Social Servs.*, 171 AD2d 934, 936, affd 80 NY2d 775), the Board is entitled to disregard an expert opinion when it is based upon an assumption that lacks evidentiary support in the record providing a rational basis (see *Matter of Freitag v New York Times*, 260 AD2d 748, 749-750)” (*Matter of Marks v County of Tompkins*, 274 AD2d 764 [2000]).

Here, the record supports a finding that claimant sustained bilateral CTS as the result of a distinctive feature of his employment. Claimant testified that he regularly used a jackhammer to break up concrete during his 22-year career with the employer. Dr. Katzman testified that it was his understanding that claimant's job involved “cutting” concrete and had assumed that claimant used a jackhammer at work. Dr. Katzman opined that vibrations from claimant's regular use of a jackhammer over an extended period of time at work was the competent producing cause of claimant's CTS, thereby providing ample evidence of a causal link between a distinctive feature of his employment and his injuries.

Therefore, the Full Board finds that the preponderance of the credible evidence in the record supports the establishment of this claim for occupational bilateral CTS with a date of disablement of September 10, 2019, the date of Dr. Katzman's initial report.

CONCLUSION

ACCORDINGLY, the WCLJ decision filed April 23, 2021, is REVERSED and the claim is established as an occupational disease for bilateral CTS with a date of disablement of September 10, 2019. The case is continued to address all outstanding issues.

*4 Clarissa Rodriguez
Chair

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