

CASE NO. 3508 CRB-5-96-12
CLAIM NO. 500101721

NAWAL KHAZZAKA
CLAIMANT-APPELLEE

: COMPENSATION REVIEW BOARD

v.

TORRINGTON COMPANY
EMPLOYER

: WORKERS' COMPENSATION
COMMISSION

and

CIGNA
INSURER
RESPONDENTS-APPELLANTS

: MAY 26, 1998

APPEARANCES:

The claimant was represented by Jack Senich, Esq., Dodd, Lessack, Ranando & Dalton, L.L.C., Westgate Office Center, 700 West Johnson Ave., Suite 305, Cheshire, CT 06410.

The respondents were represented by Kristen Sotnik Falls, Esq., Letizia & Ambrose, 1764 Litchfield Tpke., Suite 106, Woodbridge, CT 06525.

This Petition for Review from the December 13, 1996 Finding and Award of the Commissioner acting for the Fifth District was heard August 15, 1997 before a Compensation Review Board panel consisting of the Commission Chairman Jesse M. Frankl and Commissioners James J. Metro and John A. Mastropietro.

OPINION

JESSE M. FRANKL, CHAIRMAN. The respondents have petitioned for review from the December 13, 1996 Finding and Award of the Commissioner acting for the Fifth District. They argue on appeal that the commissioner erred by failing to find that the

claimant's repetitive trauma claim was filed late under § 31-294c C.G.S. We agree, and reverse the trial commissioner's decision, with further proceedings necessary on remand.

The trial commissioner found that the claimant worked in the surgical department at the respondent Torrington Company, where her duties involved belting surgical wraps. This job required her to hold a belt with her left thumb, and to insert a spring into the surgical wrap using tweezers she held in her right hand. She would then push the spring with her right thumb and turn it. The claimant performed this process approximately 1200 times per day. She began developing problems with her right thumb in August 1993, and reported her condition to her supervisor. The claimant received treatment, and the respondents accepted and paid benefits for a trigger finger right thumb injury that was producing pain and clicking in that thumb.

Over the course of the next ten months, the claimant treated with Dr. Hendrikson for her right thumb symptoms, and had surgery performed on March 24, 1994. She also complained about her left thumb, which Dr. Hendrikson diagnosed as flexor tenosynovitis. The claimant returned to work on June 20, 1994, performing inspection work that required some use of a staple gun, although with far less use of her hands than was necessary in her previous job. She stopped working for the Torrington Company in September 1994, after surgery was performed for a non-work-related condition. She was laid off soon after.

The claimant began seeing Dr. Hendrikson again on June 8, 1995, with complaints of pain in her right hand and right fifth finger, and occasional pain in her left hand and left second and third fingers. She continued to see the doctor over the next few months, adding complaints of pain or numbness in her right third and fourth fingers and

right elbow. The doctor diagnosed in September 1995 nerve compression in her right ulnar and median nerves, and flexor tenosynovitis in her right fifth finger and left thumb. He also diagnosed carpal tunnel compression in her left median nerve in November 1995. Dr. Hendrikson believed that these symptoms were all related to the claimant's employment at the Torrington Company through August 1993. Dr. Kelly, an independent medical examiner, thought that only the right and left trigger thumbs and the right carpal tunnel syndrome were work-related.

The trial commissioner found that the claimant last worked in September 1994. She first filed a request for an informal hearing concerning her right and left hand injuries on October 6, 1995, which the respondents countered with a November 20, 1995 Form 43 contesting liability. The commissioner ruled that the claimant should reasonably have known her right hand condition was related to her employment on July 10, 1995, and her right upper extremity and left carpal tunnel conditions should have been identified as work-related by September 22, 1995.¹ He ruled that the October 6, 1995 request for a hearing was therefore timely filed, and found all of the claimant's alleged injuries compensable. The respondents have appealed that decision.

The trial commissioner has based his conclusion that the claimant's right hand, right upper extremity, and left carpal tunnel conditions were the subject of timely workers' compensation claims on the fact that she knew or should have known that those conditions were employment-related during July and September 1995. However, our Supreme Court has recently explained that there is no separate statute of limitations for filing repetitive trauma claims in the Workers' Compensation Act, and that such claims

¹ These findings were added by way of a January 10, 1997 ruling on the respondents' December 23, 1996 Motion to Correct.

fall into either the occupational disease or the accidental injury category for purposes of determining jurisdiction under § 31-294c C.G.S. Discuillo v. Stone & Webster, 242 Conn. 570 (1997). The Court also stated that there is no provision in § 31-294c for tolling the one-year filing period for claims of accidental injury based on a claimant's lack of awareness that such injury was work-related, as the commissioner did here. *Id.*, 581-82.

The claimant has not offered any evidence that would tend to establish that her injuries qualify as an occupational disease under § 31-275(15) C.G.S. If she intended to prove such a claim, it would be her burden to show that she suffered from a disease “so distinctively associated with [her] occupation that there is a direct causal connection between the duties of employment and the disease contracted.” *Id.*, 579, *quoting Hansen v. Gordon*, 221 Conn. 29, 35 (1992). Neither party has mentioned any attempt by the claimant to categorize her injuries in this manner. Where the “occupational disease” issue has not been raised at trial, we do not believe a claimant should be allowed to retry her case simply because the law regarding these claims has been clarified. *Jones v. Bussman Cooper Industries*, 3204 CRB-8-95-11 (decided Feb. 2, 1998); *Crabb v. N.B. Jon-Son, Inc.*, 3296 CRB-1-96-3 (decided Nov. 19, 1997). Thus, the claimant's injuries must be construed as accidental for the purpose of the statute of limitations. As the last possible date of her exposure was in September 1994, and she did not file her claim until October 6, 1995, her Notice of Claim was untimely.

Before we dismiss this claim, however, there is one other issue we must address. The claimant argues in her brief that, pursuant to *Landrette v. City of Bristol*, 11 Conn. Workers' Comp. Rev. Op. 149, 1279 CRD-6-91-8 (Aug. 19, 1993), the respondents'

acceptance of the claimant's right thumb injury in August 1993 makes separate notice of her right hand, right upper extremity, left thumb, and bilateral carpal tunnel conditions unnecessary. In Landrette, this board ruled that, because a claimant's mouth injury was related to a compensable ankle injury for which notice had been properly filed, he was not required to provide a further notice of claim in order to claim benefits for his mouth injury. See also Roman v. Eyelets for Industry, 3040 CRB-5-95-4 (decided Feb. 14, 1997); Hebert v. New Departure Hyatt Bearings, 4 Conn. Workers' Comp. Rev. Op. 94, 300 CRD-6-84 (June 12, 1987), *no error*, 14 Conn. App. 819 (1988) (per curiam). If the claimant prevails on this issue, the filing date of her Form 30C would thus be irrelevant.

The claimant notes that the commissioner found that the claimant had been experiencing pain and numbness in her right and left hands, right fingers, forearm and elbow, and left thumb from "on or about August, 1993 to the present." The commissioner also noted that the treating orthopedic surgeon opined that the claimant's right and left hand conditions were related to her repetitive hand motions at work through August, 1993. The claimant contends that these findings establish a causal connection between the claimant's current complaints and the repetitive trauma that caused her compensable right thumb claim, and that no further notice of claim was needed afterward.

In ¶ B of his Finding and Award, the trial commissioner found that the claimant had performed a repetitive procedure with her hands approximately 1200 times per day during various periods between October 1990 and March 1994. It was toward the end of this time period that the claimant experienced problems with her right thumb. The respondents accepted that injury, and it was treated. In Landrette, Roman, and Hebert,

supra, the claimants all suffered accidental injuries, and the trial commissioner drew a link between the claimed injury and a later disability that arose because of the accepted injury. Here, we are dealing with repetitive trauma, and such a connection has not been specifically found by the trial commissioner.

The claimant's "trigger thumb" *injury* was accepted by the respondents, but the repetitive trauma that led up to that injury is not clearly defined and demarcated the same way a sudden accidental injury usually is. The claimant is not alleging that the right thumb condition *caused* her other injuries; she is alleging that the claimant's other conditions "arose out of the same repetitive trauma as the accepted right thumb condition." The fact that this case must be treated as an accidental injury for the purpose of § 31-294c does not automatically make it logical to treat this repetitive trauma injury like an accidental injury for all purposes. See Discuillo, supra, 574-75. Repetitive trauma injuries are still a separately defined category of injury under § 31-275(16)(A).

Nevertheless, Hebert states that once a claimant's injury has been accepted, the commissioner has jurisdiction to hear all matters arising therefrom. *Id.*, 95. Landrette and Roman follow that philosophy as well. Although more difficult to define, a period of repetitive trauma during one's employment is as much a compensable event as is falling down a flight of stairs at work. We can see no reason why the acceptance of one kind of injury differs from the acceptance of the other kind.

There are intimations in the evidence and in the commissioner's findings that the repetitive trauma that led to the claimant's trigger thumb also led to her other hand injuries and her carpal tunnel syndrome. As this board is not empowered to draw its own inferences from the evidence, see Webb, supra, 70; we must remand this matter to the

trial commissioner for a determination as to whether the repetitive trauma that caused the claimant's trigger thumb condition also caused her other injuries. If so, her failure to file a timely Form 30C for those injuries would not be fatal to her claim. Compare Jones, supra (case remanded for determination of connection between 1986 medical treatment and later development of carpal tunnel symptoms).

The trial commissioner's decision is reversed, and the case is remanded for further findings consistent with this opinion.

Commissioners James J. Metro and John A. Mastropietro concur.

CERTIFICATION

THIS IS TO CERTIFY THAT a copy of the foregoing was sent certified mail
this 26th day of May, 1998 to the following parties:

JACK SENICH, ESQ.

Z 012 303 472

KRISTIN SOTNIK FALLS, ESQ.

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Frances M. Wynn

Administrative Hearings Specialist