CASE NO. 3204 CRB-8-95-11
CLAIM NO. 0800016366 : COMPENSATION REVIEW BOARD

MARY JONES
CLAIMANT-APPELLEE : WORKERS' COMPENSATION COMMISSION

v.

BUSSMAN COOPER INDUSTRIES : FEBRUARY 2, 1998
EMPLOYER

and

LIBERTY MUTUAL INSURANCE CO.
INSURER
RESPONDENTS-APPELLANTS

APPEARANCES:

The claimant was represented by Paul Ranando, Esq., Dodd, Lessack, Ranando & Dalton, 700 West Johnson St., Cheshire, CT 06410.

The respondents were represented by Ellen Aspell, Esq., Law Offices of Nancy Rosenbaum, 655 Winding Brook Drive, P. O. Box 695, Glastonbury, CT 06033.

This Petition for Review from the October 30, 1995 Finding and Award of the Commissioner acting for the Eighth District was heard September 20, 1996 before a Compensation Review Board panel consisting of the Commission Chairman Jesse M. Frankl and Commissioners George A. Waldron and Robin L. Wilson.

OPINION

JESSE M. FRANKL, CHAIRMAN. The respondents have petitioned for review from the October 30, 1995 Finding and Award of the Commissioner acting for the Eighth District. They contend on appeal that the trier erred by finding the claimant's notice of claim timely, and by finding that her carpal tunnel syndrome arose out of and in the

course of her employment. They also contest the denial of their Motion to Correct. Based upon their initial argument, we must reverse the trial commissioner's decision.

The claimant was employed by the respondent Bussman Cooper Industries from October 14, 1968 through March 15, 1991, at which time Bussman Cooper ceased operations in Connecticut. Her job involved a daily repetitive twisting of caps. On June 6, 1986, she sustained a compensable injury to the middle finger of her right hand, which was accepted by the respondents.

The claimant, who is left-handed, testified that during the fall of 1992, she began experiencing numbness in her left hand. She was diagnosed with tendonitis and bilateral carpal tunnel syndrome by Dr. Ferer on October 28, 1992. Dr. Choi concurred in that diagnosis, and came to the conclusion that her carpal tunnel symptoms were caused by her work at Bussman Cooper. The claimant requested a hearing before this Commission on March 25, 1993, and contends that her carpal tunnel syndrome left her totally disabled for two separate time periods adding up to five months during 1993 and 1994. She alleges a four percent permanent partial disability of each hand.

Despite challenges from the respondents on the grounds of both causation and untimeliness, the trial commissioner found the claimant's injury compensable. She concluded that the claimant had requested a hearing within one year of the date she learned of the connection between her bilateral carpal tunnel syndrome and her employment, and that the medical evidence established the requisite causal connection to entitle the claimant to compensation. The respondents filed an appeal from that decision, and included as a Reason for Appeal the subsequent denial of their Motion to Correct.

As we recently discussed in Crabb v. N.B. Jon-Son, Inc., 3296 CRB-1-96-3 (decided Nov. 19, 1997), our Supreme Court has recently explained that, as there is no specific notice provision for repetitive trauma injuries, every cognizable workers' compensation claim must be construed as either an "accident" or an "occupational disease" for jurisdictional purposes. Discuillo v. Stone & Webster, 242 Conn. 570, 577-78 (1997). There is no provision in § 31-294 for tolling the notice period for a claim of an accidental injury based on a claimant's lack of knowledge that her injury was employment-related. It is apparent in this case that the claimant's date of injury can be no later than the last date of her employment with Bussman Cooper, which was March 15, 1991. See Borent v. State, 33 Conn. App. 495, 499 (1994). As a hearing was not requested until March 25, 1993, just over two years after the claimant's last date of possible exposure to repetitive trauma at work, that hearing cannot be construed as a timely notice of claim if the one-year statute of limitations for accidental injuries is implemented here. Thus, the trial commissioner's decision cannot stand as written.

The Supreme Court also noted in Discuillo that a repetitive trauma claim is not automatically categorized as an accidental injury rather than an occupational disease for purposes of determining jurisdiction under § 31-294c. Discuillo, supra, 580 n. 10. "We leave open, however, the question as to what factual predicate, if any, would support a conclusion that a repetitive trauma injury should be treated as an occupational disease for jurisdictional purposes." Id. In Crabb, we noted that the claimant had offered no evidence nor proposed any findings that would tend to establish his hearing loss was an occupational disease. Thus, we did not extend to him a second chance to prove that such a designation was appropriate. To that end, this case rests on similar ground. The

claimant has never once mentioned "occupational disease" in this claim, and we do not think it appropriate to allow her to attempt a recharacterization of the nature of her injury in light of Discuillo's recent clarification of the law.

There is, however, one stone yet left unturned. The claimant also argued below that the medical treatment she received in 1986 for tendonitis in the third finger of her right hand constituted adequate notice of her current symptoms of bilateral carpal tunnel syndrome. See § 31-294c(c). Although the trial commissioner alluded to the respondents' objection to that argument in Paragraph 10 of her Finding and Award, she did not make a finding regarding the relationship between the 1986 symptoms of tendonitis and the eventual diagnosis of carpal tunnel syndrome. Presumably, she felt it unnecessary to do so because she found that jurisdiction over the injury already existed on different grounds. She also declined the respondents' request to correct her finding to state a specific date of injury, which could have shed light on that subject.

Now that we have reversed the commissioner's decision regarding the adequacy of the March 23, 1993 hearing request as proper notice under § 31-294c, it has become imperative that the trier rule on the question of whether the 1986 employer-provided medical treatment (and its subsequent acceptance of the tendonitis claim) serves as adequate notice of the claimant's carpal tunnel syndrome as well. Drs. Choi and Kelly (an independent medical examiner) both addressed in their depositions the topic of a possible connection between the 1986 treatment and the eventual development of identifiable carpal tunnel symptoms. As this board is not a fact-finding body, we cannot draw inferences from their testimony on review. Webb v. Pfizer, Inc., 14 Conn. Workers' Comp. Rev. Op. 69, 70-71, 1859 CRB-5-93-9 (May 12, 1995). This case must be

remanded to the trial commissioner for clarification of her findings and/or further findings as to that issue.

The trial commissioner's decision is reversed, and remanded for further proceedings as described in this opinion.

Commissioners George A. Waldron and Robin L. Wilson concur.