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In the Matter of the Compensation of  
**FERRELL A. ANDERSON, Claimant**  
WCB Case No. 00-09515  
ORDER ON REVIEW  
Andrew Josephson, Claimant Attorneys  
Scheminske Et Al, Defense Attorneys

Reviewing Panel: Members Biehl and Lowell.

Claimant requests review of Administrative Law Judge (ALJ) Lipton's order that: (1) denied her request for a full evidentiary hearing; and (2) reduced her scheduled permanent disability award for loss of use or function of her left forearm (wrist) and right forearm (wrist) from 34 percent (51 degrees) each, as awarded by an Order on Reconsideration, to 5 percent (7.5 degrees) for loss of use or function of each hand. In its brief, the employer argues that the ALJ erred in awarding a scheduled permanent disability award for a chronic condition. On review, the issues are evidence and scheduled permanent disability. We affirm.

FINDINGS OF FACT

We adopt the ALJ's findings of fact.

CONCLUSIONS OF LAW AND OPINION

Evidence

At hearing, claimant argued that she was entitled to a full evidentiary hearing concerning the permanent partial disability benefits. The ALJ found that *Koskela v. Willamette Industries, Inc.*, 331 Or 362 (2000), did not apply to this case and claimant was not entitled to a full evidentiary hearing.

On review, claimant again requests a full evidentiary hearing, asserting that this case involves a substantial economic interest. Although claimant submitted an affidavit, she contends that, because the ALJ discounted Dr. Ho's report on the basis that her affidavit did not discuss loss of sensation, she should be allowed to testify about her medical condition.

We agree with the employer that claimant is not entitled to a full evidentiary hearing. After the ALJ issued his order, the Court of Appeals issued three cases declining to apply the *Koskela* rationale to the permanent partial disability issues in

those cases. *Trujillo v. Pacific Safety Supply*, 181 Or App 302 (2002) (the claimant did not have a constitutional right to testify at an oral hearing regarding a permanent disability award and the rating of his “base functional capacity”); *Logsdon v. SAIF*, 181 Or App 317 (2002) (the claimant was not entitled to cross-examine physicians at hearing regarding his medically stationary date); *see also Mount v. DCBS*, 181 Or App 458 (2002). Based on these cases, we agree with the ALJ that claimant was not entitled to a full evidentiary hearing.

### Scheduled Permanent Disability

Claimant argues that we should rely on the opinion of Dr. Ho, the medical arbiter, to support scheduled permanent disability awards for reduced muscle strength, loss of sensation and a chronic condition.

Claimant has an accepted bilateral carpal tunnel syndrome (CTS) condition. (Ex. 5). Dr. Sohlberg performed a left carpal tunnel release in December 1999, and a right carpal tunnel release in January 2000. (Exs. 6, 8).

Under OAR 436-035-0007(14) (WCD Admin. Order 98-055), where a medical arbiter is used on reconsideration, “impairment is established by the medical arbiter, except where a preponderance of medical opinion establishes a different level of impairment.” We do not automatically rely on a medical arbiter's opinion in evaluating a worker's permanent impairment but, rather, rely on the most thorough, complete, and well-reasoned evaluation of the claimant's injury-related impairment. *See, e.g., Kenneth W. Matlack*, 46 Van Natta 1631 (1994).

### Strength

To determine impairment due to loss of strength, the physician reports the worker's strength using a 0 to 5 grading system, which is converted into a percentage value pursuant to OAR 436-035-0007(19)(a). Under OAR 436-035-0110(8), loss of strength in the arm, forearm or hand due to a peripheral nerve injury is rated based upon the specific peripheral nerve that supplies (innervates) the weakened muscle(s).

Dr. Ho performed a medical arbiter examination in October 2000. Regarding claimant's muscle strength, Dr. Ho explained:

“Muscle strength was 4/5 at both hands. The deficit was related to pain at the wrists. In particular the patient exhibited

tenderness and reactive spasm at the ventral portion of each wrist. Innervation of the flexors and radial deviators of the wrist is via the median nerve (C6 and C7). Innervation of the flexors and ulnar deviators of the wrist is via the ulnar nerve (C8-T1). Innervation of the extensors and radial nerve (C6 and C7). Innervation of the extensors and ulnar deviators of the wrist are via the radial nerve (C6, C7, and C8).” (Ex. 19-1).

Later in the report, he said that claimant’s muscle strength testing revealed that she was “not able to exert maximum muscular contraction because of discomfort at the wrists.” (Ex. 19-2).

The Appellate Review Unit sought clarification of Dr. Ho’s report, asking him what specific nerve(s) were directly affected due to bilateral CTS and asking him to explain how each nerve would result in reduction in strength due to the accepted condition. (Ex. 20-1). In a handwritten note, Dr. Ho replied: “The reduction in strength is not because of neurologic abnormality but because [of] irritation of the flexor muscles of the wrists.” (*Id.*) In response to another question, Dr. Ho indicated that claimant’s irritation of median and ulnar nerves was “improving.” (*Id.*)

The ALJ found that Dr. Ho did not attribute claimant’s loss of strength to a particular nerve injury. The ALJ reasoned that, although Dr. Ho identified the nerves that innervated the muscles within the wrist, he did not attribute the loss of muscle strength to a neurological cause. In addition, the ALJ was not persuaded by Dr. Ho’s opinion because he indicated that the conditions resulting in the loss of strength were “improving.”

We agree with the ALJ’s reasoning and conclusion. Although OAR 436-035-0110(8) provides for a rating for “loss of strength in the arm, forearm or hand due to a peripheral nerve injury[.]” there is no evidence that claimant sustained a peripheral nerve injury. Instead, Dr. Ho said that claimant’s reduced strength was related to pain and discomfort at the wrists. (Ex. 19-1, -2). Further, he said it was *not* because of neurologic abnormality. (Ex. 20-1). Under such circumstances, we conclude that the medical evidence is insufficient to establish that claimant is entitled to an impairment value for loss of strength.

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## Sensation

The ALJ found that Dr. Ho's report of claimant's sensory loss was inconsistent with Dr. Sohlberg's reports and, in addition, was not supported by claimant's affidavit (which was submitted during the Director's reconsideration proceeding). The ALJ did not award an impairment value for loss of sensation. For the following reasons, we agree with the ALJ's conclusion.

Under OAR 436-035-0110(1), loss of palmar sensation in the hand, fingers or thumb is rated according to the location and quality of the loss, and is measured by the "two point discrimination method."

Dr. Ho tested claimant's sensation and made the following findings:

"Sensation in the palmar surface of the hands was 10 mm and at the palmar surface of the fingers was 7 mm. The decreased tactile sensitivity at the palmar surface of the hands suggests both median and ulnar nerve injury and this is further suggested by the presence of Tinel signs at both wrists affecting the palms but not the fingers and Tinel signs at both elbows with radiation of paresthesia to the wrist in each case. Additionally there was a Tinel sign over the ventral ulnar aspect of the left wrist with radiation of paresthesia into the ring finger. There was no Phalen sign." (Ex. 19-1).

The Appellate Review Unit sought clarification of Dr. Ho's report, asking the following:

"You noted that the worker had 7 mm palmar sensation of the fingers. You mentioned both median and ulnar nerve injury. Is this loss of sensation due to the accepted bilateral [CTS]? If so, please explain and please indicate what digits are affected and what part of each finger is involved." (Ex. 20-1).

Dr. Ho's handwritten response is difficult to decipher. He agreed that the loss of sensation was due to the accepted CTS, but he did not provide an explanation. (*Id.*) In response to one question, he said: "Because of improving irritation of median and ulnar nerves." (*Id.*) In response to "what part of each finger is involved[,]" he wrote "ventral surface, all fingers." (*Id.*)

We agree with the employer that Dr. Ho's reports are not persuasive. He explained that claimant's decreased tactile sensitivity at the palmar surface of the hands "suggests both median and ulnar nerve injury[.]" (Ex. 19-1). The accepted claim is bilateral carpal tunnel syndrome, which is defined as

"[T]he most common nerve entrapment syndrome, characterized by nocturnal hand paresthesia and pain, and sometimes sensory loss and wasting in the median hand distribution; affects women more than men and is often bilateral; caused by *entrapment of the median nerve* at the wrist, within the carpal tunnel." *Stedman's Electronic Medical Dictionary*, v.4.0 (1998) (emphasis supplied).

The employer has not accepted an ulnar nerve condition. As the employer notes, claimant's nerve conduction studies showed median nerve slowing, but there was no evidence of an ulnar nerve injury at either the wrist or the elbow. (Ex. 2-2, -3). Furthermore, Dr. Sohlberg, who performed both surgeries, did not identify any ulnar nerve injury.

Claimant is entitled to a value only for those findings of impairment that were caused by the accepted compensable condition or direct medical sequelae. OAR 436-035-0007(1). Unrelated or noncompensable impairment findings shall be excluded and shall not be valued under these rules. *Id.* Although Dr. Ho's initial report indicated that claimant's loss of sensation was related to both median and ulnar nerve injury, claimant is not entitled to a value for impairment related to an unaccepted ulnar nerve injury. (Ex. 19-1). In his second report, Dr. Ho agreed that claimant's loss of sensation was due to the accepted CTS (Ex. 20-1), but he did not explain how claimant's ulnar nerve injury was related to the accepted condition. Dr. Ho's opinion is inadequately explained and is not sufficient to establish impairment for loss of sensation. Consequently, claimant is not entitled to a value for loss of sensation.

### Chronic condition

The ALJ relied on Dr. Sohlberg's report, as supported by claimant's affidavit, to find that claimant was entitled to a "chronic condition" award.

The employer contends that Dr. Sohlberg's opinion is not persuasive because he recommended a lifting restriction based only on claimant's subjective complaints, whereas he found that, objectively, her exam was normal. On the

other hand, claimant relies on the opinions of Drs. Sohlberg and Ho to support her chronic condition award.

OAR 436-035-0010(5)(d) provides that a claimant is entitled to a 5 percent scheduled chronic condition impairment value when a preponderance of medical opinion establishes that, due to a chronic and permanent medical condition, claimant is significantly limited in the repetitive use of the arm (elbow and above).

In his closing examination on June 12, 2000, Dr. Sohlberg explained that claimant had no significant complaints and was able to perform all of her job tasks without complication. (Ex. 12-1). He concluded that claimant had no permanent impairment. (*Id.*)

Claimant returned to Dr. Sohlberg on August 17, 2000 with concerns about her work. (Ex. 17a). He reported that claimant was still not quite able to do heavy lifting and repetitive typing to the same degree that she was before she developed CTS. (*Id.*) Dr. Sohlberg found that claimant's exam was "pretty much normal." He explained:

"Her grip is objectively 5/5, but of course it is well known that overall strength in the hands tends to increase for several years after carpal tunnel release and may never reach 100 percent, stabilizing somewhere at 80 to 90 percent of normal.

"\* \* \* Although I think she is medically stationary with no impairment, I thin[k] it is appropriate restrict her very heavy lifting and note that her speed of typing and 10 keying will be slower than it was before the carpal tunnel. Otherwise no further followup is necessary." (*Id.*)

In an August 17, 2000 report, Dr. Sohlberg said it was not unusual that claimant's typing and 10-key speed was less than before she developed CTS. (Ex. 17b). He explained that it was "entirely reasonable for her to have 10 pound restrictions with each hand at one time in terms of lifting and simple notation that her speed of typing is likely to be less which is due to the residual effects of having had the" CTS and carpal tunnel releases. (*Id.*)

We agree with claimant that Dr. Sohlberg's August 2000 reports establish that she is significantly limited in the repetitive use of her wrists. Dr. Sohlberg's August 2000 reports are consistent with Dr. Ho's reports, which found claimant

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was significantly limited in the repetitive use of both hands and wrists due to the accepted bilateral CTS. (Exs. 19, 20). We agree with the ALJ that claimant is entitled to an impairment value for a chronic condition.

Claimant's attorney is entitled to an assessed fee for services on review. ORS 656.382(2); *see Kordon v. Mercer Industries*, 308 Or 290 (1989). After considering the factors set forth in OAR 438-015-0010(4) and applying them to this case, we find that a reasonable fee for claimant's attorney's services on review is \$1,200, payable by the employer. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by claimant's briefs), the complexity of the issue, and the value of the interest involved.

### ORDER

The ALJ's order dated October 25, 2001 is affirmed. For services on review, claimant's attorney is awarded s \$1,200, payable by the employer.

Entered at Salem, Oregon on July 2, 2002