
In the Matter of the Compensation of
GUILLERMINA VEGA, Claimant
WCB Case No. 01-02992, 00-08490, 00-08489
ORDER ON REVIEW
Gail M Gage, Claimant Attorneys
Vavrosky Maccoll Olson Et Al, Defense Attorneys
Steven T Maher, Defense Attorneys

Reviewing Panel: Members Phillips Polich, Bock, and Biehl.¹

Cambridge Integrated Service Group/Service Master Management Services, (SMMS), requests review of those portions of Administrative Law Judge (ALJ) Brazeau's order that: (1) set aside its denial of claimant's occupational disease claims for bilateral carpal tunnel syndrome (CTS) and right third, fourth and fifth trigger finger conditions; and (2) upheld Cambridge Integrated Service Group's/J's Restaurant's (J's) denial of the same conditions. On review, the issues are compensability and responsibility.

We adopt and affirm the ALJ's order with the following supplementation.

SMMS argues that Dr. Hoda's opinion relating claimant's CTS and trigger finger conditions to her janitorial work is unpersuasive for two reasons. First, it contends that the doctor did not apply his own requirements for rapid development of the conditions to claimant's case. Second, it contends that Dr. Hoda's conclusions are inadequately reasoned because he did not explain why claimant's conditions failed to improve after she was off work for several weeks. We disagree with both contentions, based on the following reasoning.

Dr. Hoda relied on a complete and accurate history regarding claimant's work activities and symptoms for the period beginning in January 2000 (when claimant started working for SMMS).² Dr. Hoda correctly understood and described claimant's janitorial work for SMMS in detail, noting that the work involved hand intensive activities, especially vacuuming and bathroom cleaning. He specifically noted that claimant cleaned more toilets than usual on a Sunday

¹ After consultation with the Department of Justice, this Board has chosen to exercise its right to issue orders as a panel of three pursuant to ORS 656.718(2) and (3).

² There is no evidence that claimant had prior hand, wrist, or finger injuries, symptoms, or conditions.

(after working for SMMS for about 2 ½ weeks) and that her right hand and finger symptoms began the next day. (Ex. 34-2; *see* Ex. A-3).

Dr. Hoda opined that even a brief work exposure can cause CTS and trigger finger conditions, under certain circumstances. He explained that these conditions may develop rapidly (as they did in claimant's case) if activities that are abusive to the underlying hand structure are performed in a "cramped space"; the worker is not "conditioned" to such work; and there is little opportunity to "rest" between strenuous activities. (Ex. 34-2). As we have noted, Dr. Hoda's understanding of claimant's work activities is accurate. It is also consistent with claimant's reporting that she cleaned 18 bathrooms during her 9:30 p.m. to 6 a.m. shift the day before her symptoms began. (*See* Ex. A-3). In other words, claimant cleaned at least 18 toilets in 9 hours (or less), in addition to her other hand intensive work, including vacuuming during that shift. This evidence supports a reasonable inference that claimant had little opportunity to rest time between strenuous hand-intensive activities.

Dr. Hoda also specifically and accurately described cleaning toilets as an activity performed in a cramped space. (Ex. 34-2). He further noted that claimant was not "conditioned" to this type of work and this observation is uncontradicted.³ (*Id.*). Moreover, Dr. Hoda's opinion as a whole clearly supports his conclusion that claimant's work activities were the type that could and did cause claimant's conditions. (*See* Ex. 34; *see also* Ex. A-5; Tr. 11, 13). We find Dr. Hoda's opinion persuasive because it is well-reasoned and based on a complete and accurate history.

We also agree with the ALJ that the remaining evidence is less persuasive because it is inadequately reasoned.⁴ And we are unpersuaded by the examining

³ SMMS contends that Dr. Hoda's reliance on claimant's "condition" as a factor in evaluating causation amounts to weighing a preexisting condition as if it was work-related cause. We disagree. Dr. Hoda noted that claimant lacked conditioning to perform this type of strenuous work. We understand this to mean that claimant was not accustomed to this strenuous hand intensive work. In our view, this observation does not support a conclusion that the absence of prior hand-intensive work amounts to a preexisting condition. *See Joel Ulledahl*, 52 Van Natta 699, 700 (2000) (Board Member Phillips Polich, concurring) (we evaluate claims involving potentially contributory preexisting conditions on a case-by-case basis, depending on the medical evidence) (*citing Trudy M. Spino*, 52 Van Natta 626 (2000) (Board Chair Bock, specially concurring) (same)).

⁴ In addition, examining physicians apparently had an inaccurate history that claimant's trigger finger conditions preexisted her work for SMMS. (*See* Exs. 31-4, 31B). There is no such evidence. *See* n. 1, *supra*.

physicians' opinion that claimant's conditions are not work related because her symptoms did not improve when she was off work. (*See* Exs. 23-6, 24, 31-A).

First, the doctors' premise is not supported by the early contemporaneous medical record: Claimant's symptoms *did* initially wax and wane with the extent and type of hand intensive work that she did. (*See* Exs. A-5, 9-2, 10-2, 15, 27, 31-3; Tr. 13; *see also* Exs. 17, 32-3). Second, Dr. Hoda explained that the progression of the trigger finger disease involves pathological changes in the finger tendons' function--with continued abusive exposure. This explanation is unrebutted. And it does *not* suggest that spontaneous or natural healing or cessation of symptoms would be expected, even after abusive exposure ended. Therefore, we find Dr. Hoda's reasoning and conclusions are more consistent with claimant's clinical course than the conclusory contrary opinions. Accordingly, we rely on Dr. Hoda's opinion and conclude that claimant's conditions are compensable. Finally, because there is no evidence that claimant's later work for J's could or did cause or contribute to the conditions, we agree with the ALJ that SMMS is responsible.

Claimant's attorney is entitled to an assessed fee for services on review. ORS 656.382(2). 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 \$1,500, payable by SMMS. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by claimant's respondent's brief), the complexity of the issues, and the value of the interest involved.

ORDER

The ALJ's order dated July 31, 2002 is affirmed. For services on review, claimant is awarded a \$1,500 attorney fee, to be paid by Service Master Management Services.

Entered at Salem, Oregon on May 13, 2002