Ontario

WORKPLACE SAFETY AND INSURANCE APPEALS TRIBUNAL

DECISION NO. 1506/19

BEFORE:	A.G. Baker: Vice-Chair
HEARING:	August 27, 2019, at Windsor Oral
DATE OF DECISION:	August 29, 2019
NEUTRAL CITATION:	2019 ONWSIAT 1964
DECISION UNDER APPEAL:	WSIB Appeals Resolution Officer (ARO) decision dated July 12, 2016

APPEARANCES:

For the worker:	R. Lesperance, Paralegal
For the employer:	Not Participating
Interpreter:	L. Teixeira, Portuguese Language

REASONS

(i) Introduction and Background

[1] The worker appealed the ARO decision dated July 12, 2016. From that decision, the worker appealed the issue of entitlement to benefits for bilateral carpal tunnel syndrome (CTS). The background to this matter was also described by the ARO as follows:

> The Worker was employed as a mushroom packer/weigher with the Employer. She began her employment with them in August 2007.
>
> The claim was established with an accident date of April 5, 2011. The Worker was 58 years of age at the time. She is right-hand dominant.
>
> The Worker reported a repetitive strain injury to both hands that she attributed to her work duties that involved placing cups in trays for one hour, at times, two to three times a day. The Worker explained each tray holds nine cups and that she had to move at a fast pace. She was also required to stack the trays.
>
> The Worker was diagnosed with a repetitive strain injury to both hands and was placed on modified duties by the Employer.
>
> The Eligibility Adjudicator's letter dated June 9, 2011, explained the Worker's bilateral hand pain was caused by her employment and that the work duties were sufficiently repetitive to have caused the injury. Initial entitlement was accepted for Health Care Benefits only. The Worker did not lose time from work at the time.
>
> The Worker maintained ongoing difficulties with bilateral hands/elbows thereafter. Arrangements were, therefore, made for the Worker to be assessed at the Acute Injuries Rehabilitation and Evaluation Centre for a multidisciplinary assessment. She was later diagnosed with a mild carpal tunnel syndrome bilaterally.
>
> A WSIB Medical Consultant reviewed the file in October 2011 and was of the view the diagnosed bilateral carpal tunnel syndrome did not result from the work duties.
>
> The Operating Area accepted this opinion and denied entitlement for a bilateral carpal tunnel syndrome condition. Entitlement remained for a repetitive strain-type injury only, with a full recovery indicated. This was explained in the Case Manager's letter dated October 31, 2011. The Worker objected to the decision.
>
> The Worker later sought representation with the Office of the Worker Advisor in 2012, and in January 2016, an Appeal Readiness Form was submitted to the file. The Worker objected to the decision dated October 31, 2011.
>
> The above details were reviewed again, but the decision to deny entitlement to a bilateral carpal tunnel syndrome was maintained. This was explained in the Case Manager's decision dated February 17, 2016. The matter was referred to the Appeals Services Division to address the Worker's appeal.

[2] In the decision under appeal, the ARO concluded that there was no causal relationship between the work performed and the worker's CTS condition. That is the sole issue before me in this appeal.

(ii) Law and policy

[3] The *Workplace Safety and Insurance Act,* 1997 (WSIA) is applicable to this appeal. I also noted section 126 of the WSIA requiring that I apply Board policy. In that regard, the following policy packages, Revision #9, have been stated by the Board to be applicable to this appeal:

241 – Initial Entitlement

300 – Decision Making/Benefit of Doubt/Merits and Justice

[4] I have considered the above noted policies as necessary in reaching the below decision. I also note that under Section 2(1) of the WSIA, an "accident" includes:

(a) wilful and intentional act, not being the act of the worker,

(b) a chance event, occasioned by a physical or natural cause, and

(c) disablement arising out of and in the course of employment.

[5] Under *Operational Policy Manual* Document No. 15-02-01, a "chance event" is defined as an identifiable unintended event which causes injury. An injury itself is not a chance event. Also under the policy, "disablement" includes both an unexpected result of working duties, as well as a condition that emerges gradually over time. In order to determine whether or not the disablement or medical condition is causally related to working duties or an accident, this Tribunal applies the "significant contribution" test. Under this well established test, it is not required that the workplace accident be the sole cause of the worker's condition. As long as the work place injury or activity is a "significant contributing factor," then entitlement to benefits is established. In *Decision No. 280* (1987), W.C.A.T.R. 27, the Tribunal defined "significant contributing factor" as follows:

> A "significant contributing factor" is a factor of considerable effect or importance or one which added to the worker's pre-existing condition in a material way to establish a causal connection.

(iii) Decision

[6] In this case, the ARO noted that the worker's family doctor indicated that the worker had no prior problems with her hands. A Physical demands analysis was also provided during return to work efforts that noted the essential tasks of the worker's job and that she suffered a flare-up in her condition. As the ARO noted, the Return-to-Work Specialist explained that there was sustained wrist extension to varying degrees with repetitive finger movements to place the cups into the larger trays. It was evidently explained that such activities were not suitable for the worker, given she was still in a recovery phase. As such, while improvement was expected over time, there appeared to be recognition of the demands placed on the worker's bilateral wrists. That was to the extent that precautions were recommended for re-introducing certain tasks, such as the cups and trays duties.

[7] Of course the worker had complained that the tasks were not a problem themselves, but the pace of her work. The Board therefore requested a review from a Board Medical Consultant in October of 2011, to in part address the repetitive nature of the pre-injury duties. The diagnosis from the family doctor was also noted along with EMG study results in September 2011 that had

confirmed bilateral CTS. However, the medical consultant did not find the medical evidence sufficient to establish compatibility between the CTS and the worker's duties.

[8] The worker also underwent a REC assessment in September 2011 in which she detailed her condition and symptom history. She again related her condition bilaterally to the pace of her work involving packing and weighing small cups of mushrooms and placing them on a line. While the job was noted to have been largely sedentary in nature by the ARO, it was also noted that the worker had developed pain in her hands and wrists, with prescriptions for anti-inflammatories and a wrist brace.

[9] The worker also underwent a bone scan in August 2011 that evidently demonstrated mild increased activity in the left wrist, minimal in both hands, as the ARO noted. X-rays were unremarkable, but CTS was clearly noted bilaterally. Nevertheless, the ARO went on to find that there was an absence of objective musculoskeletal or neurological findings, and the findings were based mainly on subjective complaint. Further testing was recommended as well as splints for both hands and restrictions for returning to work.

[10] Further assessment was also noted by the worker's physiatrist in April 2012, noting various hand symptoms. It was indicated that there may be an element of CTS, but that would not explain all the worker's symptoms. As the ARO noted, non-organic issues were suspected and further testing was recommended. June 2012 test results showed normal nerve conduction and improvement from previous testing. Further use of wrist braces was however recommended, but not a surgical option.

[11] The ARO also noted further reporting from the family doctor in 2014 that explained his records revealed no prior musculoskeletal problems and that the worker was seen in 2011 for repetitive use of the arms/wrists/hands, placing cups in trays at work. The repetitive strain injuries were noted as a result of employment duties. A number of referrals were also made to various specialists for nerve conduction studies that were stated to have revealed CTS bilaterally. While there was some improvement in the worker's condition, the worker's diagnosis was as follows:

- Bilateral wrist and bilateral hand tenosynovitis producing significant pain, reduced range of motion and reduced grip strength.
- Bilateral carpal tunnel syndrome 90% resolved and still producing fingertip numbness nocturnally.
- Bilateral tennis elbow -- ongoing pain.

[12] While the ARO noted that the doctor found there to be ongoing bilateral wrist and hand injuries, it was also noted that CTS can be caused by a number of factors involving forceful and/or awkward hand movements. The physical demands of the job as provided by the employer in 2011 were also again noted. The ARO found there was insufficient evidence of a causal relationship between the worker's CTS and her pre-injury job duties that required placing half ounce cups into a tray and then stacking the trays for two to three non-consecutive hours per shift. It was further found that there were no forceful, awkward or vibratory positions compatible with CTS bilaterally. In brief, the worker's job, which she had performed for a number of years, was not found to have been highly repetitive to the extent that it could have caused her CTS.

[13] I also noted the submissions from the employer in this case, and note that they did not otherwise participate in the hearing. As the worker also testified, she began with the accident employer in 2007, and was 59 years of age when she reported her injury in 2011. It was noted that the process had been changed from one to two hours of performing her noted job duties, and she reported bilateral wrist and elbow pain in April of 2011. As also noted above, she was granted entitlement for strain type injuries, with therapy and restrictions eventually identified. It was also submitted that through testing of the worker, it was identified that she had early degenerative changes involving her left wrist and both hands.

[14] The worker's REC assessment was also noted in September 2011 in which it was concluded that she had bilateral CTS, with further studies recommended and splints to be provided. It was noted that electrodiagnostic studies of the upper extremities in September 2011 concluded the worker suffered from changes consistent with "mild" bilateral CTS. The further reporting from the worker's specialists was also noted, including the finding that her CTS condition would not fully explain her symptoms. Further nerve conduction testing was recommended and completed in June 2012, in which it was submitted the worker had test results within normal limits. It was also stated by the employer that the worker voluntarily retired in November of 2012, although that does not in my view impact the findings in this decision regarding initial entitlement to CTS benefits.

[15] The employer also cited the Tribunal Medical Discussion Paper entitled "Carpal Tunnel Syndrome", authored by Dr. Graham from 2000, and revised in 2001 and 2003. To summarize the employer's points from that paper, it was noted that CTS exists also within the non-working population. Further, there are other known causes, such as rheumatoid arthritis. It was further noted for example that high frequency low force use of a computer key pad was not shown to be an important precipitating factor for CTS. It was also noted that studies have not drawn a significant increase in the risk of developing CTS as a result of repetitive hand use.

[16] It was therefore submitted by the employer that, while the worker may have experienced pain, and required physiotherapy and modified duties, that her entitlement was correctly limited to a repetitive strain injury. The second nerve conduction study was again noted to have been normal, with no findings of neuropathy of either wrist. It was further submitted that the worker's duties, filling very light cups, was of the nature that would not precipitate the onset of CTS. It was submitted that there was no forceful activity or use of vibratory tools, and the nature of the job had not been shown to be repetitive to the extent that it was a causal factor in this case.

[17] The worker however testified in this case, and it was emphasized by her representative, that she had no prior hand or wrist conditions. She also noted her duties included weighing and packing at least two hours a day, some seven days a week. She was also required to fill and weigh baskets and use both hands in her job. There did not appear to be any heavy lifting or weights, noting very light containers to fill and that the larger baskets only weighed about 10 pounds.

[18] However, the worker emphasized that the job was fast paced and that she would have problems with her hands to the extent she could not go to work some days. The worker also stated that she began to wear braces as noted from the above medical prescriptions. She stated that she suffered swelling, tingling and numbness in her hands. She also noted constant serious pain in her hands and difficulty sleeping. She noted attending physiotherapy and having to have assistance from her husband for many basic household chores since the onset of her condition.

The worker also noted stopping work in November 2012, and stated she could not continue due to her injuries. She noted having cortisone shots and being prescribed daily pain medication for her wrists.

[19] In that regard, I found that the worker did suffer the onset of CTS conditions bilaterally. It was also evident that, while each individual task in her job may have involved light weights, she performed a relatively fast paced and repetitive job. More importantly, the balance of the medical reporting on file supported the worker's CTS claims. In coming to that finding, I noted the following information.

[20] The REC assessment of September 8, 2011 found that the worker clearly had bilateral CTS. The report noted the worker's symptoms of migratory pain, swelling, numbness, and paraesthesia. The REC report from Dr. Yovanovich went on to recommend further studies of the upper extremities, splints, and restrictions that in large part focused on the worker's CTS condition. That included for example avoiding work with heavy vibrating equipment and sustained or heavier tasks with the hands and arms.

[21] The worker's family doctor reported in May of 2014 that the worker had reported the onset of pain bilaterally in the hands, wrists and arms and related it specifically to repetitive tasks at work placing cups in trays. Again, it was confirmed that the worker had no prior issues of that kind. Rather, the doctor responded to an inquiry about the worker's duties and opined that there was no doubt about a relationship with the worker's symptoms. Reference was also made to the worker's specialists, the diagnosis of mild bilateral CTS, and a discussion about overuse and potential surgery. While the report also noted improvement in the worker's condition, the worker was clearly diagnosed with "Bilateral carpal tunnel syndrome 90% resolved and still producing finger tip numbness nocturnally." The worker also continued to have physical restrictions on lifting, gripping and activities of daily living.

[22] With that reporting in mind, a response from the worker's representative regarding the Tribunal Medical Discussion paper on CTS was also noted. For example, an excerpt from the paper was noted to raise the potential presence of CTS when numbness and tingling in the affected area is identified, as in this case. It was further noted that the worker has continued to express problems with pain, numbness and paresthesia, as noted in the above cited medical reporting. The specialist reporting from Dr. Charron, physiatry, in April of 2012 was also specifically noted. That reporting also cited a history of swelling and numbness in the bilateral hands. Physiotherapist reporting in November of 2011 also had a record of the worker suffering from "pins and needles" in the bilateral hands.

[23] It was also submitted that the worker's physical demands in her pre-injury job, as found in the employer's PDA, also included risk factors for CTS. That included for example gripping, handling and pulling below the shoulder. Again, while those duties were not evidently heavy in nature, there were frequent and repetitive. It was also noted that the employer confirmed in the Form 7 on file that the worker had an increase in her duties from one to two hours filling trays. It was therefore evident that there was a temporal relationship between the change in process and the onset of the worker's condition, which was also noted in the reporting from her family doctor in May 2014.

[24] I also note for the record that, in addition to the worker's family doctor, the REC assessment, and Dr. Charron, other specialists also confirmed the worker's condition. That included for example Dr. Desai, who performed the nerve conduction study and confirmed the worker's mild CTS bilaterally in September 2011. It is also important to again note the legal test for the worker to be entitled to benefits for the onset of CTS, a gradual disablement type injury. In that regard, the worker's duties need not have been the sole factor leading to the onset of her injuries. They need only have been a significant contributing factor, which I found was the case in this appeal.

[25] I therefore find that the worker is entitled to benefits for bilateral CTS. The appeal is allowed in that regard.

DISPOSITION

[26] The appeal is allowed.

[27] The worker is granted entitlement to benefits for bilateral CTS.

DATED: August 29, 2019

SIGNED: A.G. Baker