

Oneida Tribal Judicial System

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TRIAL COURT

Catherine Bennett
Petitioner

Docket No: 11-TC-144

v.

Date: June 25, 2012

HRD-Benefits and
Crawford & Co. Insurance,
Respondents

DECISION

This case has come before the Oneida Tribal Judicial System, Trial Court. Judicial Officers, Jean M. Webster, Sandra Skenadore, and Leland Wigg-Ninham presiding.

A trial was held on April 10, 2012 and appearing in person were: Petitioner, Catherine Bennett, and her attorney, Brian T. Stevens. Respondents appeared by Christina Blue Bird, HRD; Jack Fleming, Crawford & Co. Insurance, and attorney Robert W. Orcutt.

Appearing as witnesses for the Petitioner were: Catherine Bennett, Shirley Stroobants and Sharon VanDeHei. Appearing as witnesses for the Respondent: Jack Fleming.

I. Background

This case involves a denial of additional worker's compensation benefits. Ms. Bennett is an Administrative Assistant for the reception area at the Casino. On March 5, 2011 the casino experienced a power outage that resulted in the Reception area having to revert to using the old phone system for all calls. During the outage Ms. Bennett operated the backup phone system for approximately 6 hours. Operating the backup phone system required physical movements and

actions that were different from her normal work duties. She sustained injuries to her arms, neck and back.

Ms. Bennett received medical for a time, but her pain persisted and doctors had a difficult time diagnosing the precise medical issue. On June 27, 2011 Petitioner received a letter from Crawford Claims Management Services denying her claim for further benefits per Workers Compensation Law, Article 13.3-0 Definitions, which reads:

“Covered Injury/Accidents. Mental or Physical harm to an employee caused by accident or disease and arising out of and in the course of employment. Injury includes mental harm or emotional stress or strain without physical trauma, which arises from exposure to conditions or circumstances beyond those common to occupational and/or non-occupational life and is predominately work related, extraordinary and unusual.”

September 22, 2011 Petitioner received a second letter from Crawford Claims Management Services denying her claim for further benefits based on Workers Compensation Law, Article 13.3-0 as cited in the initial denial letter on June 27, 2011.

October 21, 2011 Petitioner, Catherine Bennett filed her petition appealing Respondents Oneida HRD-Benefits and Crawford and Company, denial of additional Workman’s Compensation benefits. Petitioner is seeking the following: 1) Half of the treatment cost to be paid for the duration of the injury until healed; 2) Full pay with all the deductions taken for September 1-19, 2011 at her pay rate of \$12.97 per hour; 3) Full reinstatement of all vacation and personal time that had to be used due to her injury of March 5, 2011, including the time off from September 1-19, 2011; 4) Full pay with full vacation and personal time if ever need to be off due to the injury; 5) Repayment to UMR and UNUM Insurance for all costs incurred, as well as my medical bills for the injury.

On April 10, 2012 a hearing was held and the parties were informed a decision will be forward within 30 days after receiving the transcripts. April 27, 2012 the court received the transcripts of the hearing. Pursuant to Oneida Civil Procedure Rule 25(A), a deliberation is to be held within ten (10) days of receipt of a complete transcript of the hearing. The court held a deliberation on May 8, 2012. On May 9, 2012 an Extension of Written Decision was sent to the parties stating a

decision would be rendered by May 29, 2012. The Lead Judicial Officer erred in sending this notice to the parties as there was a second (final) deliberation scheduled. Final deliberation was held on May 24, 2012. Under Rule 25(C), upon completion of the final deliberation, the trial court shall complete a written decision with thirty (30) days.

II. Issue

Is the Petitioner entitled to receive additional workman's compensation for the injury suffered on March 5, 2011?

Did Respondents provide benefits in accordance with Sec. 13.8-2?

III. Analysis

Findings of Facts

1. Catherine Bennett is an employee in the Food and Beverage Department at the Oneida Casino. Ms. Bennett has worked there for almost 16 years and by all accounts has been a model employee. At the time of the injury, Ms. Bennett worked as a receptionist answering the telephone.
2. On March 5, 2011 a power outage at the Oneida Casino caused the Reception area to revert back to the old switchboard as the main switchboard was not working.
3. For approximately 6 hours Petitioner manually operated the old switchboard for all incoming and transferring of telephone calls. Operating the old switchboard required Ms. Bennett to move and use her arms and upper body in a way that was different from operating the new switchboard.
4. Approximately two (2) hours into her job during the power outage Petitioner began experiencing pain in her arm, but because she did not feel the employees who would relieve her could operate the phone, Ms. Bennett did not take any breaks.
5. On March 7, 2011 Ms. Bennett timely filed an Injury/Medical Report form and an Internal Security Investigative Division Voluntary Statement form.

6. About one (1) hour after her shift ended Ms. Bennett's shoulders, arms, and neck began seizing up.
7. Petitioner first met with someone at Employee Health who later referred the Petitioner to Bellin Occupational Health.
8. The Occupation Nurse from Bellin Health made an initial diagnosis of myalgia and stated Petitioner was not injured and requested that a head phone or headset be placed at the work station and discharged the Petitioner. Initial treatment received was testing the Petitioner's strength.
9. Petitioner next saw Dr. Ringwelski from Bellin Health. Dr. Ringwelski prescribed physical therapy and to see Dr. Marchuta if necessary.
10. In late March 2011 Petitioner saw Dr. Marchuta. He did not provide any diagnosis, but treated the Petitioner for myalgia as previously diagnosed by Bellin Occupation Nurse and Dr. Ringwelski.
11. In mid-April Petitioner was discharged from Bellin Occupational Health but without her knowledge. Petitioner continued with physical therapy. It wasn't until June 23, 2011 when Petitioner became aware after her appointment with Dr. Marchuta that she was being discharged.
12. On June 30, 2011 Petitioner visited Dr. Quan Ali and he performed tests for arthritis and the results were negative. Dr. Ali referred the Petitioner to her primary care physician, Dr. Patricia Sias.
13. On July 28, 2011, Ms. Bennett saw Dr. Ringwelski. Dr. Ringwelski wrote in his notes that he would not expect the March 5 incident to have been the source of continuing symptoms past three months. Therefore, he could not explain her ongoing pain from the work incident on March 5, 2011. He also stated her ongoing myalgia is not work-related.
14. On the basis of the note of July 28, 2011 from Dr. Ringwelski, Respondent, by letter dated September 22, 2011, denied further benefits and agreed to pay for all medical bills through July 28, 2011 which included the appointment with Dr. Ringwelski.
15. Dr. Sias, upon initial examination and review of the blood work, referred Petitioner to Dr. Kanneganti, a Neurologist, to see if there was any nerve damage.

16. On September 28, 2011 Dr. Kanneganti ordered an MRI of the cervical spine and an MRI for the thoracic area of the spine. The results showed a small amount of slippage in one disc and some basic problem in the thoracic area.
17. On October 17, 2011 Petitioner had an EMG study done and a nerve conduction study done. The results showed there was no nerve damage. Dr. Kanneganti then referred Petitioner to Dr. Vandorp, a pain specialist.
18. On February 29, 2012 Dr. Vandorp conducted an examination of the areas of swelling, the arms, and conducted a stress test to aid in the diagnosis. Dr. Vandorp diagnosed muscle damage with mild diffuse myofascial pain syndrome which is correlated to muscle damage due to trauma or injury to muscles. Dr. Vandorp recommended a different type of physical therapy which has shown positive results and improvement in Ms. Bennett's condition.
19. From March 5, 2011 to August 31, 2011 Petitioner continued to work.
20. Between September 1-19, 2011 Petitioner took a leave of absence due to the pain. Petitioner received disability during this time period.
21. From April 23, 2012 to May 10, 2012 Petitioner took a second leave of absence due to the pain and intensity of the physical therapy.

IV. Conclusions of Law

Before rendering a decision, and before we determine what the issue of disagreement is between the parties, we comment briefly on what is not at issue. It is not at issue that Ms. Bennett suffered a covered injury as defined in Sec. 13.3-12. Respondents do not contest that when the power went out and Ms. Bennett had to operate the switchboard in the "old" manner, it exposed Ms. Bennett to conditions or circumstances beyond those common to occupational or non-occupational life and caused a physical injury. It is also not in dispute that Ms. Bennett has not suffered permanent partial disability. Even the one doctor who issued an opinion most supportive of Ms. Bennett's cause indicated that whatever the case, Ms. Bennett's condition does not include permanent partial disability and the Court agrees.

The issue, in our view, is whether Respondents have provided Ms. Bennett with “all reasonable and necessary first aid, medical, surgical and hospital services incurred by the employee as a *direct result* of a compensable injury.” Sec. 13.8-2. (Emphasis added)

Respondents base their denial of further benefits for Ms. Bennett on the fact that Dr. Ringwelski stated, on the basis of Ms. Bennett’s July 28, 2011 visit, that he would not have expected this incident to have been the source of continuing symptoms past three months. Therefore, Respondents argue, further pain or injury is not a “direct result” of the March 5, 2011 power outage and unusual telephone use by Ms. Bennett.

While Ms. Bennett does carry the burden of proof, it is only by a preponderance of the evidence that she must show that her ongoing need for medical treatment is a “direct result” of her March 5, 2011 telephone event. Sec. 13.3-9. We find that Ms. Bennett has met her burden to at least have an extension of benefits.

The totality of the facts and circumstances, not only the medical opinions, persuades us that Ms. Bennett’s ongoing back and arm pain are a “direct result” of a compensable injury which occurred on March 5, 2011. Ms. Bennett had not previously complained of the type of pain which began after March 5, 2011. During her shift and immediately after Ms. Bennett had muscle problems and pain. Ms. Bennett visited numerous doctors who ruled out various possibilities for the cause of the pain. It is true that fibromyalgia and diffuse myofascial pain syndrome were mentioned as possibilities as a source of pain. Our understanding from the evidence is that neither of these conditions, while causing pain, would be caused or created by the March 5, 2011 incident.

At this point it is difficult to know where the injury of March 5, 2011 to the upper back muscle ends and the fibromyalgia and/or myofascial pain syndrome begins.

With the facts provided, the Court does not believe the Petitioner had reached her end of her healing. Perhaps the end of healing may have been reached if the initial diagnosis of the injury

had been correct; however, the evidence shows Ms. Bennett was not initially properly diagnosed and treated for the injury sustained on March 5, 2011, therefore maximum healing was not reached as quickly as possible. Ms. Bennett saw over a half a dozen doctors before reaching Dr. Vandorp who recommended therapy that appears to be helping. Respondent, through Mr. Flemming, testified that an aggravation of a pre-existing condition is still compensable under the Workman's Compensation Law. The Petitioner's pre-existing condition is the March 5, 2011 injury which Dr. Marchuta stated she reached maximum healing on April 20, 2011. Petitioner claimed she was still in pain. This being the case Petitioner should be entitled to additional workman's compensation.

The correlation between the onset and continuation of Ms. Bennett's pain and the events of March 5, 2011 are too strong to deny or to ascribe the cause to anything else. Ms. Bennett had to engage in unorthodox and uncommon movements for 6½ hours without a break on March 5, 2011. Since March 5, 2011, she has had ongoing and persistent pain in her upper back and arms. While the doctors cannot say definitively there is a link between the events of March 5, 2011 and her pain through the spring of this year, we are not bound only by medical evidence and the ultimate question here is not medical; it is legal. The close proximity in time and the onset of the pain during Ms. Bennett's shift can lead to only one conclusion: the use of the old switchboard led to injury in Ms. Bennett's upper back and arms.

Nevertheless, the benefits cannot be extended indefinitely. We rule that benefits shall be extended through May 10, 2012 as this is the end of Ms. Bennett's second leave. Ms. Bennett expected to be able to return to work at that time. The trial was on April 10, 2012 so there is no basis in the record to extend benefits beyond May 10, 2012.

IT IS SO ORDERED.