

STATE OF CALIFORNIA
WORKERS' COMPENSATION APPEALS BOARD

Case No. MON 212802

KAREN TYRUS ,

Applicant,

v.

PRESBYTERIAN INTER COMMUNITY
HOSPITAL; P.S.I., KEENAN & ASSOCIATES,

Defendants.

**FINDINGS, AWARD
AND ORDER**

GORDON, EDELSTEIN, KREPACK, GRANT, ET AL.
By: Sherry Grant, Esq.
Attorneys for Applicant

KEGEL, TOBIN & TRUCE
By: D'Arcy T. Swartz, Esq.
Attorneys for Defendants

An application having been filed herein; all parties having appeared and the matter having been regularly submitted, the **Honorable RAYMOND F. CORREIO**, Workers' Compensation Administrative Law Judge ("WCJ"), finds, awards and orders as follows:

FINDINGS OF FACT

1. Applicant, Karen Tyrus, born February 2, 1942, while employed during the period of 1993 to and including March 26, 1996, as a scrub nurse (group 35), at Whittier, California, by Presbyterian Intercommunity Hospital (P.S.I., Keenan & Associates), sustained injury to her bilateral wrist, hands, bilateral upper extremities (excluding shoulders), and neck.

2. Applicant's primary treating physician was Dr. Nelson for the period of July 5, 1996 through March 22, 1998. During this time Dr. Nelson performed two carpal tunnel surgeries in August and October of 1996.

3. Applicant properly selected Dr. Sperling as her new primary treating physician on March 23, 1998.

4. Dr. Nelson referred applicant to consulting physicians in neurology (Dr. Rosenthal) and chronic pain management (Dr. Waldman).

5. Dr. Nelson determined applicant to be permanent and stationary on March 12, 1997 and in his last report of February 11, 1998 indicated applicant could continue to work.

6. Dr. Sperling's opinion and conclusion that applicant is temporarily totally disabled does not constitute substantial medical evidence and is not entitled to the presumption of correctness pursuant to Labor Code Section 4062.9.

7. Dr. Rosenthal's consulting physician reports are admissible but not entitled to the rebuttable presumption of correctness pursuant to Labor Code Section 4062.9.

8. Applicant was permanent and stationary on March 12, 1997 pursuant to the report of Dr. Nelson.

9. Applicant is in need of further medical treatment to cure or relieve from the effects of the industrial injury limited to her bilateral upper extremities (excluding her shoulders), wrist, hands, and neck. Treatment for applicant's dystonia condition would be on a non-industrial basis.

AWARD

AWARD IS MADE in favor of Karen Tyrus against Presbyterian Intercommunity Hospital, (P.S.I., Keenan & Associates), as follows:

a) Broken periods of temporary total disability to and including March 12, 1997, at the rate of \$289.33 per week, with credit for all payments previously paid, less credit for time worked, and also any offset/credit for any EDD/SDI payments.

Karen Tyrus
MON 212802

- b) Further medical treatment as provided in Finding No. 9.

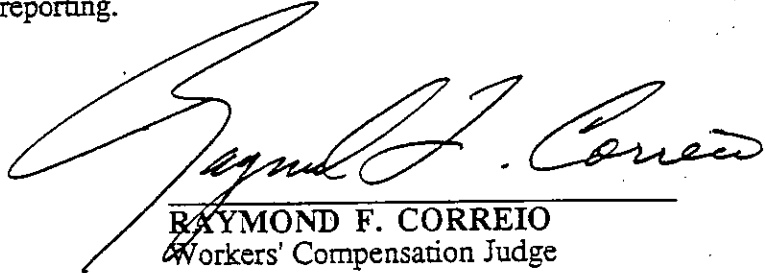
ORDERS

IT IS ORDERED that 12% of all accrued and unpaid temporary disability benefits to date are to be paid forthwith as reasonable attorney fees to the Law Offices of Gordon, Edelstein, Krepack, Grant, et al.

IT IS FURTHER ORDERED that all other issues are moot at the present time pending further medical evaluations and related medical reporting.

Dated: _____

2/10/99



RAYMOND F. CORREIO
Workers' Compensation Judge

Filed and Served by mail on: Feb. 10, 1999
On all parties on the Official Address Record

By: _____

Suzanne Boccone
Suzanne Boccone

Karen Tyrus
MON 212802

CASE NUMBER: MON 212802

KAREN TYRUS v. PRESBYTERIAN INTER COMMUNITY HOSPITAL
(P.S.I.; Keenan & Associates)

JUDGE: RAYMOND F. CORREIO

DATE OF INJURY: 1993 through March 26, 1996

OPINION ON DECISION

OVERVIEW/CHRONOLOGY

With respect to the admitted cumulative trauma during the period of 1993 through March 26, 1996, there is a complex treatment chronology.

Initially applicant properly selected and designated Dr. Russell Nelson as her primary treating physician on July 5, 1996. Dr. Nelson remained her properly elected and designated primary treating physician for the next 21 months until he was replaced by Dr. Sperling on March 23, 1998. During his almost two year treatment of the applicant, Dr. Nelson performed two carpal tunnel release surgeries. Applicant had right carpal tunnel release surgery in August of 1996, and left carpal tunnel release surgery in October of 1996. Also during the course of Dr. Nelson's treatment he referred the applicant out to consulting/secondary physicians, specifically neurologist Dr. Rosenthal and Dr. Waldman a specialist in chronic pain management. Over the course of treating the applicant, Dr. Nelson prepared at least 15 narrative and progress reports, commenting on applicants disability status over the course of 21 months.

Following applicants carpal tunnel release surgery in October, 1996, she remained temporarily totally disabled seven weeks as reflected in Dr. Nelson's December 5, 1996 report. A little over three months later in his report of March 12, 1997, which is labeled as a permanent and stationary report, Dr. Nelson notes applicant has returned to work and is working full duty. Obviously she is no longer temporarily totally disabled. Applicant continued to be followed by Dr. Nelson after her permanent and stationary status in terms of monitoring ongoing treatment. As reflected in his April 7, 1997 report, although applicant has continued symptoms, Dr. Nelson indicated applicant remained permanent and stationary in his report of March 12, 1997. In his June 19, 1997 status report, Dr. Nelson again specifically opines applicant remained permanent and stationary but clarified work restrictions he previously enumerated in his permanent and stationary report of March 12, 1997.

The next status report from Dr. Nelson dated August 28, 1997, is an obvious error with respect to the applicant's status. On page 1 he indicates the applicant "remains TTD." It appears Dr. Nelson was confused as to the applicant's prior status. On June 19, 1997 he still had the applicant permanent and stationary. There is no explanation as to a change in the applicant's status between June 19, 1997 and August 28, 1997. Given this fact, applicant "remained" permanent and stationary, not temporarily totally disabled. In his January 12, 1998 report Dr. Nelson does an extensive review of three medical reports commenting specifically on his disagreements and disputes with the defense physician, Dr. Komblum. His only comment is on the issue of apportionment. He does not clarify or elucidate as to applicants disability status.

Dr. Nelson's last report is dated February 11, 1998. He specifically indicated on page 2 with respect to applicant's disability status, that applicant may continue to work. Obviously that is an opinion and conclusion inconsistent with any contention or argument the applicant is temporarily totally disabled.

Dr. Nelson's reports cannot be reviewed in a vacuum and must be seen in conjunction with the reports from Dr. Rosenthal, the consulting neurologist. It should be emphasized that Dr. Rosenthal prepared seven detailed narrative reports between November 25, 1997 and December 29, 1998. In her initial narrative report of November 25, 1997, Dr. Rosenthal in terms of disability status deferred to Dr. Nelson, and recommended applicant have further neurologic diagnostic testing. (Based on an accurate chronology of Dr. Nelson's disability status related to the applicant on or about November 25, 1997 and subsequent to that date, applicant remained permanent and stationary and able to work.) In her January 12, 1998 report, approximately 30 days before Dr. Nelson's last report of February 11, 1998, Dr. Rosenthal notes applicant is working. In her March 3, 1998 status report, Dr. Rosenthal indicated applicant would be temporarily totally disabled for approximately four weeks. Interestingly in her next report of April 3, 1998, Dr. Rosenthal again defers the applicant's disability status to Dr. Nelson. However, the last report we have from Dr. Nelson is February 11, 1998 in which he indicated the applicant can continue to work. Apparently no one advised Dr. Rosenthal that as of March 23, 1998, Dr. Nelson was no longer the applicant's primary treating physician but that she had selected/designated a new primary treating physician, specifically Dr. Sperling.

Karen Tyrus
MON 212802

From a neurological perspective which includes all of applicant's complaints related to her upper cervical spine and upper extremities, Dr. Rosenthal notes the applicant is permanent and stationary in her report of May 19, 1998. Dr. Rosenthal evaluates applicant two more times and in subsequent reports dated September 15, 1998 and December 29, 1998, she continued to reaffirm that applicant remained permanent and stationary as indicated in her report of May 19, 1998.

Applicant selected/designated a new primary treating physician on March 3, 1998 specifically Dr. Sperling. He performed his initial evaluation of the applicant on April 3, 1998. In his April 3, 1998 initial report without a review of any medical records or reports, Dr. Sperling indicated applicant's disability status as being temporarily totally disabled. Dr. Sperling in his capacity as the applicant's new primary treating physician notes specifically in his April 3, 1998 report that he is aware applicant is currently under the care of Dr. Rosenthal as a neurologist and also that Dr. Rosenthal had performed certain diagnostic studies on the applicant. In his July 9, 1998 report, Dr. Sperling notes that he intended to refer the applicant to a recognized hand surgeon specialist at UCLA, but due to the applicant's preference, he referred the applicant out to Dr. Marmarelis to examine the applicant for her complaints related to suspected dystonia. In his report of October 7, 1998 Dr. Sperling refers the applicant out to Dr. Waldman for chronic pain management and notes applicant remains temporarily totally disabled. (This is the second referral to Dr. Waldman, the first having been done by Dr. Nelson back in October, 1997.) The last report in evidence from Dr. Sperling is dated December 10, 1998 which indicates applicant remains temporarily totally disabled.

WHO IS APPLICANT'S CURRENT PRIMARY TREATING PHYSICIAN AND IS THIS DOCTOR'S OPINION AND CONCLUSIONS AS TO APPLICANT'S DISABILITY STATUS ENTITLED TO THE REBUTTABLE PRESUMPTION OF CORRECTNESS PURSUANT TO LABOR CODE SECTION 4062.9?

Applicant's attorney properly elected and designated Dr. Sperling as applicant's new primary treating physician, pursuant to a Labor Code Section 4600 notification letter dated March 23, 1998.

However, the much more provocative question is whether Dr. Sperling's opinions and reports indicating applicant being currently temporarily totally disabled constitute substantial medical evidence. If Dr. Sperling's opinion as reflected in his reports as to the applicant's disability status, i.e., that she is temporarily totally disabled do not constitute substantial medical evidence then his opinion on her disability status is not entitled to the rebuttable presumption of correctness pursuant to Labor Code Section 4062.9.

Karen Tyrus
MON 212802

After being properly elected and selected as applicant's new primary treating physician on March 23, 1998, Dr. Sperling initially examined the applicant on April 3, 1998. (Interestingly, this was exactly the same date that applicant was also examined by Dr. Rosenthal, her consulting neurologist.) It should also be noted, and is of significance, that both Dr. Nelson, the applicant's initial long term primary treating physician, and Dr. Sperling both have offices in the same building, i.e., 7700 Imperial Highway in Downey. Both doctors occupy different suites in the same office building, with Dr. Nelson occupying suite R and Dr. Sperling suite D. In his April 3, 1998 initial report Dr. Sperling in taking a history on page 2 notes applicant was treating with Dr. Nelson and also contemporaneously notes the applicant has been treating with Dr. Rosenthal currently as well as having neurological diagnostic testing administered by Dr. Rosenthal. Dr. Sperling on page 8 of his initial report indicates applicant is to "remain" temporarily totally disabled. Because he had not reviewed any records or reports when he made this determination, he is totally unaware as to applicant's true prior disability status. Given the applicant's long past treatment history with Dr. Nelson over the span of almost two years and having multiple consultations and neurological diagnostic testing with Dr. Rosenthal, it was imperative that Dr. Sperling defer any conclusion or opinion on applicants current disability status until he verified either telephonically or by review of pertinent medical records and reports, applicants present disability status. It is not unreasonable given the fact that both the applicant's previous primary treating physician, Dr. Nelson and her new treating physician, Dr. Sperling, who both share the same office building could not have either in person or telephonically readily shared information as to applicant's current disability status. Dr. Nelson could have easily brought Dr. Sperling up to speed with respect to the fact that his most recent assessment of the applicant on February 11, 1998 was that she remained permanent and stationary and could continue to work.

In his April 30, 1998 report Dr. Sperling finally received a comprehensive packet of medical reports for review. He reviewed approximately 26 separate reports. However, what is lacking in his review of those particular reports, and what is again imperative in this particular situation, is that he specifically comment or discuss the conclusions of these doctors. This was essential given applicants prior treatment history. Dr. Sperling in addition to reviewing past treatment records and reports, was required to comment specifically on any opinions and conclusions by those treating physicians that he either agreed with or disagreed with in order to establish any new or changed disability status, i.e., that the applicant was TTD as reflected on page 9. Interestingly, Dr. Nelson's report of February 11, 1998 indicating applicant could continue to work was not provided to Dr. Sperling. Dr. Nelson's March 12, 1997 permanent and stationary report was provided to him as well as two subsequent reports of April 7, 1997 and June 19, 1997 indicating applicant remained permanent

Karen Tyrus
MON 212802

and stationary. These permanent and stationary reports did not provoke any comment or discussion by Dr. Sperling specifically related to what factors, if any, in terms of changed circumstances or specific objective factors relegated the applicants status from permanent and stationary to TTD. The only reports from Dr. Rosenthal reviewed by Dr. Sperling were dated November 25, 1997 and January 12, 1998. Interestingly the January 12, 1998 report from Dr. Rosenthal indicates applicant is working. Strong evidence that Dr. Sperling is unaware of all of the neurodiagnostic testing done by Dr. Rosenthal related to applicant's cervical complaints is reflected in Dr. Sperling's May 29, 1998 report. He indicates he wants cervical diagnostics done!

On August 19, 1998 Dr. Sperling finally reviews Dr. Rosenthal's May 19, 1998 report (which is a permanent and stationary report) and also Dr. Rosenthal's report of September 15, 1998 (which again Dr. Rosenthal indicates the applicant continues to be permanent and stationary!). There is no critical comment, or discussion by Dr. Sperling with respect to the significance of Dr. Rosenthal's permanent and stationary assessment of the applicant and her complete diagnostic workup from a cervical spine standpoint. Without discussion of the implications of Dr. Rosenthal's report and whether Dr. Sperling agrees or disagrees with his opinions and conclusions, his determination that the applicant was TTD on August 19, 1998 fails to constitute substantial medical evidence. Again a simple phone call from Dr. Sperling to Dr. Rosenthal as to applicants status would have perhaps led to some clarification of Dr. Sperling's diagnostic and disability assessment. Dr. Sperling was well aware applicant continued to see Dr. Rosenthal as reflected on page 2 of Dr. Sperling's report of September 15, 1998. Dr. Sperling in his October 7, 1998 report reviewed Dr. Kornblum's report of June 27, 1998 and also referred the applicant out to Dr. Waldman for chronic pain management. There is no comment by Dr. Sperling that he is even aware that the applicant was sent to Dr. Waldman for pain management back in October, 1997 by Dr. Nelson.

CONSULTING PHYSICIAN'S REPORTS: PRESUMPTABILITY V. ADMISSIBILITY

Dr. Rosenthal's reports are admissible but not entitled to a secondary "bootstrap" rebuttable presumption of correctness. As previously discussed, Dr. Rosenthal, the consulting neurologist, prepared at least seven detailed narrative reports. These reports deal with comprehensive diagnostic testing, findings and opinions related primarily to applicant's cervical complaints.

In the 15 reports by Dr. Nelson, admitted into evidence, there are only two references to the reports of Dr. Rosenthal. In his report of January 12, 1998, page 2, Dr. Nelson merely summarizes one report from Dr. Rosenthal dated November

Karen Tyrus
MON 212802

25, 1997. Dr. Nelson fails to specifically incorporate Dr. Rosenthal's November 25, 1997 report. Moreover, he fails to discuss or comment upon Dr. Rosenthal's findings which is a critical deficiency given the fact applicant's neck injury was disputed by defendant. Interestingly, Dr. Nelson not only reviews the defense report from Dr. Kornblum in his January 12, 1998 report, but also on page 4 specifically discusses, comments and even criticizes Dr. Kornblum's opinion. Dr. Nelson should have followed this same report protocol with respect to his own consultative neurologist, Dr. Rosenthal.

In his February 11, 1998 report, page 2, Dr. Nelson only makes a passing reference to Dr. Rosenthal. "She has been evaluated by Dr. Rosenthal and apparently there is a new EMG. I have received Dr. Rosenthal's initial records, but not the most recent EMG report. We will send for those." This is not an incorporation or comment on any medical opinion rendered by Dr. Rosenthal. Up to Dr. Nelson's last report rendered on February 11, 1998, Dr. Rosenthal had issued three narrative reports. In Dr. Rosenthal's January 12, 1998 report, page 7, she comments extensively on her neurodiagnostic testing of the applicant and her opinions and conclusions related to this testing. Dr. Nelson's reports are totally devoid of any critical comment or discussion related to Dr. Rosenthal's report of January 12, 1998 or prior reports of November 25, 1997, or June 19, 1997.

There are nine narrative reports in existence from applicant's second primary treating physician, Dr. Sperling. Dr. Sperling in his report of April 30, 1998 indicates on page 6 and 7 that he has reviewed Dr. Rosenthal's reports dated November 25, 1997 and January 12, 1998. However, there is no discussion or comment on the significance of Dr. Rosenthal's opinions and conclusions. Dr. Sperling in his report of June 17, 1998, page 2, indicates he reviewed Dr. Rosenthal's report of April 3, 1998. Again, there is no comment by Dr. Sperling on Dr. Rosenthal's report. The next reference we have by Dr. Sperling to Dr. Rosenthal is in Dr. Sperling's August 19, 1998 report. On pages 1 and 2, Dr. Sperling reviews a significant report from Dr. Rosenthal dated May 19, 1998 where Dr. Rosenthal renders a final permanent and stationary report with work restrictions. Dr. Sperling fails to comment or discuss the significance of the treating neurologist's determination that the applicant is permanent and stationary and why in the face of this particular report Dr. Sperling concludes the applicant still remains temporarily totally disabled in August of 1998.

The last reference by Dr. Sperling to Dr. Rosenthal is in Dr. Sperling's report of September 15, 1998, page 2. The only reference is that the applicant will be seeing Dr. Rosenthal in the next week.

Karen Tyrus
MON 212802

Based on the facts and circumstances of a particular case, it may be adequate for a primary treating physician to merely incorporate or reference the consulting physician's report or reports without specific comment. However, as previously discussed in this case, the applicant had a long 21 month prior treatment history with multiple consultative physicians. It is imperative and essential for both Dr. Nelson and Dr. Sperling given this long treatment history and change in disability status, that there be more than a passing reference or review of the multiple reports from the treating neurologist, Dr. Rosenthal. Dr. Rosenthal's reports and diagnostic testing necessitated a comprehensive discussion and comment especially when the primary treating physician made a disability determination on applicant's status different than that of the consulting physician.

The need for ongoing medical treatment is not inconsistent with and injured workers' permanent and stationary status.

Moreover, given the particular facts of this case, when there is a change in primary treating physicians, it is inappropriate without strong objective evidence for the new primary treating physician to make a different determination of the applicants current disability status without a comprehensive review of all prior treatment reports and diagnostic testing to date. The mere fact applicant selects a new treating physician does not automatically warrant that treating physician starting from square one. When there has been a previous history of long term treatment and comprehensive diagnostic testing with multiple doctors determining the applicant was permanent and stationary, it is incumbent upon the new primary treating physician to immediately obtain and review all medical reports and records and diagnostic testing before rendering an opinion on the applicants current disability status. If those records and reports were not provided in conjunction with an initial examination then the doctor should defer a determination of the applicants status pending review of, and comment on those critical records. Whether an injured worker is temporarily totally disabled is a question of fact based on substantial medical evidence. The credible and reliable medical evidence in this case reflects applicant has been, and continues to be, permanent and stationary since at least March 12, 1997 as determined by her previous primary treating physician, Dr. Nelson.

PARTS OF BODY

With respect to the admitted cumulative trauma for the period of 1993 through March 26, 1996, defendants admit injury to applicant's bilateral wrists and hands. The credible medical evidence of record also supports a finding/determination of injury to applicant's bilateral upper extremities and neck. There is no substantial evidence to support an injury to the applicant's shoulders independent of any


Karen Tyrus
MON 212802

radiculopathy related to the applicant's neck. (See Dr. Sperling's report of April 3, 1998, page 4 where applicant indicates that she has never noted pain or discomfort in her shoulders.) Also Dr. Sperling in his report of April 30, 1998 on page 1 indicates that although the applicant is complaining of pain to the left side of her neck, she has no pain radiating to her upper extremities.

NEED FOR FURTHER MEDICAL TREATMENT

Applicant is in need of further medical care and treatment limited to her bilateral upper extremities excluding her shoulders and excluding any treatment for non-industrial dystonia. She is also entitled to treatment for her neck.

Dated: 2/10/99


RAYMOND F. CORREIO
Workers' Compensation Judge

SERVED ON SAID DATE BY MAIL ON PERSONS
SHOWN ON THE OFFICIAL ADDRESS RECORD.

DATE: 2/10/99 BY: Suzanne Boccione

RFC/sb

Karen Tyrus
MON 212802