

2025 WL 1357621 (N.Y.Work.Comp.Bd.)

Workers' Compensation Board

State of New York

EMPLOYER: NYC DEPT OF TRANSPORTATION

Case No. G367 1544

Carrier ID No. 08412330045 W847008

May 5, 2025

***1** CNY Other Than Ed, HEd Water

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Date of Accident 8/11/2023

The Full Board, at its meeting held on April 15, 2025, considered the above captioned case for Mandatory Full Board Review of the Board Panel Memorandum of Decision filed on December 27, 2024.

ISSUE

The issue presented for Mandatory Full Board Review is whether claimant sustained a compensable occupational disease.

The Workers' Compensation Law Judge (WCLJ) established this claim for an occupational disease involving the bilateral elbows and bilateral [carpal tunnel syndrome](#) (CTS), with a date of disablement of August 11, 2023.

The Board Panel majority affirmed the WCLJ, finding that the medical evidence was sufficient to provide an accurate history and details of claimant's job, and to conclude that claimant's injuries were causally related to his employment.

The dissenting Board Panel member would disallow the claim, finding that the medical records do not demonstrate the necessary recognizable link between the alleged occupational disease and some distinctive feature of claimant's work.

The self-insured employer (SIE) filed an application for Mandatory Full Board Review, and requests that the Board Panel majority decision be reversed and the claim be disallowed. The SIE argues that the claimant has not met his burden of proof to establish the claim for an occupational disease.

In rebuttal, the claimant requests that the Board Panel majority decision be affirmed, arguing that there were no errors of either law or fact made by either the Board Panel or the WCLJ.

Upon review, the Full Board votes to adopt the following findings and conclusions.

FACTS

This claim was assembled after the claimant filed an Employee Claim (C-3) form to report injuries to both hands and both arms. The claimant alleged that his injuries were due to stress and strain while working as a supervisor highway repairer. The claimant reported that he first received medical treatment on August 11, 2023. He did not stop work because of his injury and did not provide notice to his employer.

On August 11, 2023, Dr. Szeinuk performed an initial examination of claimant and reported that claimant had a history of progressively worsening hand and upper extremity symptoms, including pain, abnormal sensation, as well as loss of strength and dexterity. The claimant complained of pain in his forearms, right elbow and both hands, with numbness and tingling and loss of strength and dexterity in both hands. The claimant also reported pain and stiffness in both shoulders, and a shooting pain in the right forearm that radiates up to the elbow. The symptoms in the hands and upper extremities started several years earlier, but progressively worsened over the past year. The claimant reported that from 1996 to 2022, he worked for the employer, and from 2016 until his retirement, he worked as a highway repair person and supervisor. He retired due to his medical conditions, which include the hand symptoms. The duties of the claimant's work doing roadway repair included "prolonged, regular exposure to forceful motion, repeated motion, awkward positions, vibrating tools, involving both upper extremities." Specifically, the claimant reported working in extreme weather conditions, using electric, pneumatic and gas-powered hand tools such as chop saws, jack hammers, sledgehammers, pick axes, manhole cover hook tools, prune scan, and shovel. He also operated large dump trucks which constantly vibrated, and he lifted and carried heavy loads. His usual work activities were operating heavy machinery, vibrating tools, heavy gripping, carrying, pulling, pushing, and lifting. The claimant denied any prior history of injuries or accidents involving his neck and upper extremities. Dr. Szeinuk noted that the claimant had recently been diagnosed with [diabetes](#) and also has additional medical conditions that are related to exposure to toxic fumes at the World Trade Center.

***2** Upon physical examination, Dr. Szeinuk found abnormalities in the shoulders, elbows, hands, and wrists. Specifically, in the bilateral shoulders, there was positive impingement, and the claimant had abduction range of motion to 170 degrees but had pain with motion over 130 degrees; the right medial epicondyle was tender to palpation; there was a positive Tinel's sign in the left elbow and in the bilateral median nerves; the bilateral extensor forearms were tender to palpation; the bilateral wrists were tender; there was dysesthesia to superficial touch in the right index finger, and decreased sensation in both index fingers; and Phalen's test was positive bilaterally. As is relevant to this claim, Dr. Szeinuk diagnosed bilateral CTS, [tendinitis](#) in the bilateral forearms, and bilateral [epicondylitis](#). The doctor opined that all conditions were caused by exposure to repetitive trauma and vibrations of his upper extremities during his work as a highway repair person for some 26 years.

On October 27, 2023, EMG/NCV studies were conducted that revealed evidence of compression of the left median nerve at the wrist, consistent with mild left CTS, and [polyneuropathy](#) in both upper extremities.

In a decision filed on October 30, 2023, the WCLJ found prima facie medical evidence (PFME) for bilateral CTS per Dr. Szeinuk's report of August 11, 2023; noted that the SIE waived its right to an Independent Medical Examination (IME) and waived cross-examination, but reserved its right to produce witnesses; and continued the case for possible SIE lay witness, summations and a decision.

At a hearing on December 5, 2023, the SIE confirmed that it was not going to produce any lay witness testimony. The WCLJ found PFME for the bilateral elbows and the SIE again waived an IME, as well as cross-examination of Dr. Szeinuk. The claimant then testified about his work duties and stated that he was required to engage in work activities that involved the regular use of his hands and arms. The claimant explained the types of projects he worked on and the tools he used. The claimant was required to use gas-powered, electric and pneumatic hand tools such as jackhammers, chop saws, chain saws, hand tampers, sledgehammers, pry bars, screw guns, reciprocating saws, and impact driver guns. The claimant stated that his wrist and elbow symptoms of pain and numbness started 10 years ago. He confirmed that he has had no prior accidents, injuries or traumas involving his wrists or elbows, and that he has no outside hobbies that require regular or repetitive use of his hands and arms. He did not miss work because of his symptoms. On cross-examination, the claimant stated that when he first started having symptoms in his hands, it was especially after jackhammering and using a sledgehammer, or other gas-powered tools that vibrated a lot. He would have issues with his hands and then later in the day, his elbows would hurt. He used to do miniature

model painting as a hobby but had to stop because he was not able to hold the brush due to numbness and pain in his fingers. He only pursued this hobby for two years before he stopped. When he was a supervisor highway repairer, he worked on an iPad to complete forms. He used the iPad between six and ten times per day.

***3** After the claimant's testimony, the WCLJ heard summations and then made a decision to establish the claim for an occupational disease involving the bilateral elbows and bilateral CTS, with a date of disablement of August 11, 2023. The WCLJ also set the claimant's average weekly wage at \$3, 664.76, and found no lost time from work. The WCLJ's findings were set forth in a decision filed on December 8, 2023.

The SIE filed an application for review and requested that the WCLJ decision be reversed and the claim be disallowed. The SIE argued that the claimant failed to provide sufficient evidence of causal relationship that shows a recognizable link between his conditions and some distinctive feature of his employment because Dr. Szeinuk did not identify the specific work activities performed by claimant that allegedly caused his conditions. The SIE noted that Dr. Szeinuk's report stated that the claimant's work activities included "roadway repair, extreme weather conditions, using electric, pneumatic and gas-powered hand tools such as gas-powered chop saws, jack hammers, [and] sledge hammers." The SIE argued that this "brief explanation" does not show that the doctor had actual knowledge of the claimant's work activities other than in a general sense, and therefore the claimant did not meet his burden of proof.

In rebuttal, the claimant requested that the decision be affirmed, particularly based on the claimant's credible testimony and Dr. Szeinuk's credible and uncontroverted report.

LEGAL ANALYSIS

"An occupational disease is defined as 'a disease resulting from the nature of employment and contracted therein' ([Workers' Compensation Law § 2\[15\]](#))" (Matter of [Oliver v Chicago Pneumatic Tool Co.](#), 289 AD2d 796 [2001]). To support a claim for an occupational disease, the claimant must demonstrate "'a recognizable link between his or her condition and a distinctive feature of his or her employment' (Matter of [Camby v System Frgt., Inc.](#), 105 AD3d 1237 [[2013] [internal quotation marks and citation omitted]; see Matter of [Bates v Marine Midland Bank](#), 256 AD2d 948 [1998])" (Matter of [Jones v Consolidated Edison Co. of N.Y., Inc.](#), 130 AD3d 1106 [2015]).

Evidence that a repetitive action is a distinct feature of a claimant's employment together with medical evidence of the necessary causal link will support a claim for an occupational disease (see Matter of [Aldrich v St. Joseph's Hosp.](#), 305 AD2d 908 [2003]). "Such medical proof, in turn, must signify a probability of the underlying cause that is supported by a rational basis and not be based upon a general expression of possibility" (Matter of [Corina-Chernosky v Dormitory Auth. of State of N.Y.](#), 157 AD3d 1067 [2018] [[internal quotation marks and citations omitted]). Where the medical evidence is vague and lacks clarity, there is insufficient evidence of the necessary recognizable link between the alleged occupational disease and some distinctive feature of the claimant's work (Matter of [Bonet v New York City Tr. Auth.](#), 205 AD3d 1287 [2022]). However, an occupational disease claim is properly established where the claimant has provided credible and uncontroverted medical evidence of a recognizable link between the claimant's condition and a distinctive feature of his or her occupation (Matter of [Grinnage v New York City Tr. Auth.](#), 210 AD3d 1251 [2022]; Matter of Department of Transportation, 2023 NY Wrk Comp G3104807).

***4** Here, the claimant testified with great detail about the many hand tools he was required to use to perform his work duties, and explained that when he first started having symptoms in his hands, it was especially after jackhammering and using a sledgehammer, or other gas-powered tools that vibrated a lot. The claimant's testimony regarding his work duties and tools he used while working was unrefuted. Dr. Szeinuk also took a detailed history of the claimant's use of these same hand tools while working for the employer over the course of 26 years. Dr. Szeinuk further noted that the usual duties of the claimant's work doing roadway repair included "prolonged, regular exposure to forceful motion, repeated motion, awkward positions, [and] vibrating tools" that involved both upper extremities. As such, the Full Board finds that Dr. Szeinuk was sufficiently informed of the claimant's work activities to give an opinion on causal relationship. The Full Board further finds that Dr. Szeinuk's opinion that

the claimant has bilateral CTS, bilateral [tendinitis](#) in the forearms, and bilateral [epicondylitis](#), and that these conditions were caused by exposure to repetitive trauma and vibrations of his upper extremities during his work as a highway repair person for some 26 years, which is the only opinion on causal relationship in the file, is supported by sufficient credible evidence.

Therefore, the Full Board finds that the record supports establishment of this claim for an occupational disease involving the bilateral elbows and bilateral CTS.

CONCLUSION

ACCORDINGLY, the WCLJ decision filed on December 8, 2023, is AFFIRMED. No further action is planned by the Board at this time.

Clarissa Rodriguez
Chair

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