Palmer, Adele

CAUSAL RELATIONSHIP

Physical therapist

Expert Testimony

EXPERT TESTIMONY

Scope of expertise

Physical therapists may testify about the causation of a condition if their opinion is admissible under ER 702 using the analysis from *Frausto v. Yakima HMA* 188 Wn.2d 227 (2017). Overruling *In re Juan Muñoz*, BIIA Dec., 05 11698 (2007). ***….In re Adele Palmer,* BIIA Dec., 16 16600 (2017)**

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BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

IN RE: ADELE PALMER	**)**	**DOCKET NOS. 16 16600 & 17 11074**
	)	
CLAIM NO. Y-422391	**)**	**DECISION AND ORDER**

In 2008, Adele Palmer sustained an injury to her low back while working for Bevco Sales, Inc. The Department allowed her claim. In 2014, she developed pelvic floor dysfunction which causes her to have difficulty with bladder and bowel control. The Department issued an order declining responsibility for this condition and issued another order finding her employable. Our industrial appeals judge determined the industrial injury was not the cause of Ms. Palmer's pelvic floor dysfunction and that she was employable. Ms. Palmer requests allowance of pelvic floor dysfunction, based on the testimony of her treating providers, and awarding her time-loss compensation benefits. We agree with our industrial appeals judge's decision but have granted review to overrule our significant decision, *In re Juan Muñoz*.[1] In *Munoz*, we held that physical therapists are incompetent to testify regarding the cause of medical conditions and such opinion testimony is inadmissible. As explained below, we abandon our former hard-and-fast rule and adopt an analysis using the framework provided by ER 702. The Department orders are **AFFIRMED**.

DISCUSSION

We previously held the testimony of a physical therapist is insufficient to establish medical causation. In *In re Juan Muñoz,* the worker presented the testimony of a physical therapist regarding the cause of Mr. Muñoz's left knee osteoarthritis and the employer objected to the admissibility of the testimony to prove medical causation. In determining whether physical therapists are qualified to offer opinions regarding medical causation, we cited RCW 18.74.010(3) for the proposition that physical therapists are not authorized to diagnose medical conditions or to determine causation. But RCW 18.74.010(10) provides the:

> 'Practice of physical therapy' is based on movement science and means: (a) Examining, evaluating, and testing individuals with mechanical, physiological, and developmental impairments, functional limitations in movement, and disability or other health and movement-related conditions **in order to determine a diagnosis**, prognosis, plan of therapeutic intervention, and to assess and document the ongoing effects of intervention; [Emphasis added].

[1] BIIA Dec., 05 11698 (2007).

Revised Code of Washington 18.74.180(1) further provides, "Regardless of the setting in which physical therapy services are provided, only the licensed physical therapist may perform the following responsibilities . . . initial examination, problem identification, **and diagnosis for physical therapy**. . . ." [Emphasis added]. The statute clearly states that physical therapists examine individuals to determine a diagnosis. Based on this language, a hard-and-fast rule excluding causation opinion testimony by a physical therapist is no longer appropriate.

We adopt the supreme court's recent analysis in *Frausto v. Yakima HMA*.[2] In *Frausto,* a party sought to introduce causation testimony from an advanced registered nurse practitioner (ARNP). The trial court granted summary judgment on grounds that nurses are categorically prohibited as a matter of law from offering opinion testimony regarding proximate cause in medical malpractice claims. The supreme court remanded the case to the trial court to determine whether an ARNP has the requisite specialized knowledge to qualify as an expert on causation under the Rules of Evidence. The court held that if an ARNP is qualified to independently diagnose a particular medical condition, the ARNP may have the requisite expertise, under Evidence Rule 702, to discuss medical causation of that condition. That rule provides, "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."

We overrule our previous decision in *Muñoz* to the extent that it amounted to a blanket prohibition on testimony by physical therapists regarding causation. Instead, whether a physical therapist is competent to testify on a causation question should be determined on a case-by-case basis in accordance with ER 702.

In the current appeal, Ms. Palmer presented the testimony of physical therapist Jill Ghent, DPT, and C. Stephen Settle, M.D., regarding the cause of her pelvic floor dysfunction. Dr. Ghent has a doctorate in physical therapy and regularly assesses patients with pelvic floor dysfunction. She testified that she commonly provides opinions on the cause of conditions she treats. Based on the ability of a physical therapist to diagnose conditions under RCW 18.74, Dr. Ghent's testimony that she is experienced in providing opinions on causation, and the absence of an objection to her testimony on causation, we conclude her testimony on causation is competent and admissible under ER 702.

[2] 188 Wn.2d 227 (2017).

Dr. Settle specializes in physical medicine and rehabilitation and has been Ms. Palmer's treating provider since October 2011. Both providers testified that the cause of Ms. Palmer's pelvic floor dysfunction was chronic muscle tightness due to the pain in her coccyx and sacrum caused by the industrial injury.

As the claimant's attending physician, Dr. Settle's opinion is entitled to special consideration. The supreme court determined that special consideration should be given to the findings of an attending physician, qualified in the area of medicine involved, who has attended the patient for a considerable period of time for the purpose of treatment and who has treated the patient. Such a physician "is better qualified to give an opinion as to the patient's disability than a doctor who has seen and examined the patient once."[3] If we reject the opinion of the claimant's attending physician, we must articulate good reasons for doing so.[4] With respect to causation, it is important to note that in most instances, an attending physician is not in a better position to determine causation than an examining physician because both physicians must rely almost entirely on the history of an injury or disease and the claimant's prior medical history to make such a determination.[5]

Craig H. Smith, M.D., testified on behalf of the Department and performed a single examination of Ms. Palmer on April 27, 2016. However, we find Dr. Smith's testimony persuasive because he specializes in neurology and his opinion is supported by the diagnostic testing that Ms. Palmer suffers from diffuse nerve damage, or neuropathy, that was not caused by the June 9, 2008 injury to her low back or tailbone. After considering the opinion testimony of Dr. Settle, Jill Ghent, and Dr. Smith, we hold by a preponderance of the evidence that the industrial injury was not a proximate cause of Ms. Palmer's diffuse nerve damage or neuropathy. Because the pelvic floor dysfunction was not proximately caused by the industrial injury, Ms. Palmer would be capable of working as a telephone sales representative. The industrial injury did not render her unemployable from July 19, 2016, through January 26, 2017.

[3] *Spalding v. Department of Labor & Indus.,* 29 Wn.2d 115, 129 (1947).
[4] *Groff v. Department of Labor & Indus.,* 65 Wn.2d 35 (1964).
[5] *In re Natishia M. Powell*, Dckt. No. 00 16728 (October 1, 2001).

DECISION

In Docket No. 16 16600, the claimant, Adele Palmer, filed an appeal with the Board of Industrial Insurance Appeals on July 11, 2016, from an order of the Department of Labor and Industries dated May 13, 2016. In this order, the Department affirmed a November 25, 2015 order in which it affirmed an August 5, 2015 order denying responsibility for a condition diagnosed as pelvic floor dysfunction. This order is correct and is affirmed.

In Docket No. 17 11074, the claimant, Adele Palmer, filed an appeal with the Board of Industrial Insurance Appeals on January 30, 2017, from an order of the Department of Labor and Industries dated January 26, 2017. In this order, the Department affirmed a July 19, 2016 order ending time-loss compensation benefits on July 18, 2016, because the claimant was able to work. This order is correct and is affirmed.

FINDINGS OF FACT

1. On September 6, 2016, and June 5, 2017, an industrial appeals judge certified that the parties agreed to include the Jurisdictional Histories in the Board record solely for jurisdictional purposes.
2. Adele Palmer sustained an industrial injury on June 9, 2008, when she was pulling a hand cart and felt a pop in her low back. The industrial injury caused coccydynia, low back pain, and a peptic ulcer.
3. The June 9, 2008 industrial injury did not proximately cause a diagnosis of pelvic floor dysfunction.
4. Adele Palmer is 65 years old and has a GED. She worked in food sales and delivery for a number of years and was not prevented from doing so by a prior low back surgery.
5. The June 9, 2008 industrial injury prevented her from returning to work in her former job and limited her to working in the light category of work from July 19, 2016, through January 26, 2017.
6. Adele Palmer was able to obtain and perform gainful employment on a reasonably continuous basis in a job such as telephone sales from July 19, 2016, through January 26, 2017.

CONCLUSIONS OF LAW

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties and subject matter in these appeals.

2. The June 9, 2008 industrial injury did not proximately cause Adele Palmer to develop pelvic floor dysfunction.

3. Adele Palmer was not a temporarily totally disabled worker within the meaning of RCW 51.32.090 during the period of July 19, 2016, through January 26, 2017.

4. The May 13, 2016 order of the Department of Labor and Industries is correct and is affirmed.

5. The January 26, 2017 order of the Department of Labor and Industries is correct and is affirmed.

Dated: December 15, 2017.

BOARD OF INDUSTRIAL INSURANCE APPEALS

LINDA L. WILLIAMS, Chairperson

JACK S. ENG, Member

Addendum to Decision and Order
In re Adele Palmer
Docket Nos. 16 16600 & 17 11074
Claim No. Y-422391

Appearances

Claimant, Adele Palmer, by Small Snell Weiss Comfort, P.S., per Sara B. Sanders

Employer, Bevco Sales, Inc., None

Department of Labor and Industries, by Office of the Attorney General, per Lucretia F. Greer

Petition for Review

As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review and decision. The claimant filed a timely Petition for Review of a Proposed Decision and Order issued on July 24, 2017, in which the industrial appeals judge affirmed the orders of the Department dated May 13, 2016, and January 26, 2017.

Evidentiary Rulings

The Board has reviewed the evidentiary rulings in the record of proceedings and finds that no prejudicial error was committed. The rulings are affirmed.