UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DAVID C. BAKER,	:	
	:	
Plaintiff,	:	
	:	
V.	:	CASE NO. 3:98CV1073(RNC)
	:	
METRO-NORTH RAILROAD COMPANY,	:	
	:	
Defendant.	:	

RULING AND ORDER

Plaintiff David C. Baker, a longtime employee of defendant Metro-North Railroad Company, brings this action pursuant to the Federal Employers' Liability Act (FELA), 45 U.S.C. §§ 51, et seq., claiming that he developed carpal tunnel syndrome (CTS) in the course of his employment as an electrical lineman due to negligence on the part of Metro-North. In anticipation of a jury trial scheduled for next month, plaintiff seeks an order preventing Metro-North from presenting evidence of a lack of prior similar injuries and Metro-North seeks an order precluding plaintiff's expert witnesses from testifying on the issue of medical causation.[1] For the reasons that follow, plaintiff's request is denied and Metro-North's request is granted in part. Plaintiff's Motion Regarding The Lack of Prior Similar Injuries

To prevail on his FELA claim, plaintiff must prove that Metro-

[1] Metro-North's request takes the form of an objection to a ruling by Magistrate Judge Martinez denying its motion to preclude.

North knew or should have known of the risk that he would develop CTS yet failed to exercise reasonable care to inform and protect him. See Gallick v. Baltimore & Ohio R.R., 372 U.S. 108, 117 (1963); Ulfik v. Metro-North Commuter R.R., 77 F.3d 54, 58 (2d Cir. 1996). The absence of prior similar injuries is logically relevant to these issues and should be considered by the jury as part of the totality of the circumstances. See Inman v. Baltimore & Ohio R.R., 361 U.S. 138, 140 (1959); Dukes v. Illinois Cent. R.R. Co., 934 F. Supp. 939, 953 (N.D. Ill. 1996).

Plaintiff contends that a lack of prior similar injuries is irrelevant because Metro-North knew about the occupational risk factors associated with CTS. Even if Metro-North did know about CTS risk factors generally, evidence that it had no experience with injuries like plaintiff's remains relevant to the issues whether plaintiff's injury was reasonably foreseeable and whether Metro-North should have taken steps to inform and protect him.

Plaintiff also contends that a lack of prior similar injuries may be given undue importance in the jury's deliberations but this concern can be adequately addressed through appropriate cautionary instructions.

Metro-North's Motion Regarding Expert Testimony on Causation

Baker intends to offer expert testimony by Dr. Philip Luchini, a treating orthopedic surgeon, and Ellen Rader-Smith, a professional

ergonomist, that Baker's work at Metro-North caused him to develop CTS. With regard to each witness, Baker has the burden of establishing that the proffered opinion testimony has "a sufficiently 'reliable foundation' to permit it to be considered." Campbell v. Metro. Prop. & Cas. Ins. Co., 239 F.3d 179, 184 (2d Cir. 2001) (quoting Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579, 597 (1993)). Metro-North contends that plaintiff has not satisfied this burden with regard to either expert's opinion on the issue of causation.

Dr. Luchini

Luchini's opinion rests on his use of a methodology known as differential diagnosis, or differential etiology. This method of analyzing specific causation requires "listing possible causes, then eliminating all causes but one." McCullock v. H.B. Fuller Co., 61 F.3d 1038, 1044 (2d Cir. 1995). It is a "standard diagnostic tool used by medical professionals to diagnose the most likely cause or causes of illness, injury and disease." Glaser v. Thompson Med. Co., 32 F.3d 969, 978 (6th Cir. 1994); see Cutlip v. Norfolk Southern Corp., No. L-02-1051, 2003 WL 1861015, *7 (Ohio Ct. App. April 11, 2003) (differential diagnosis is a "learned process of elimination"). It has been peer reviewed and is generally accepted both in and out of court as a reliable scientific method for determining causation. See Westberry v. Gislaved Gummi AB, 178 F.3d 257, 262-63 (4th Cir.

1999).

Luchini's use of differential diagnosis provides a sufficiently reliable foundation for his opinion. An important factor in assessing the reliability of an expert's methodology is whether the expert uses it in out-of-court work. Luchini has testified that ascertaining causation is a routine part of his diagnostic process, (Tr. 10/9/01, 5-6), and it is clear from his testimony that he uses differential diagnosis for this purpose.[2]

Metro-North contends that Luchini's opinion is inadmissible because he has failed to eliminate other possible causes of plaintiff's injury. If there is a possible cause that Luchini has inexplicably failed to consider and cannot rule out, his analysis may be so incomplete that his opinion is inadmissible.[3] However, no such cause has thus far been identified by Metro-North.[4]

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[2] Luchini has treated other electrical workers with CTS whose job functions were similar to Baker's. (Tr. 10/9/01 31-32.)

[3] Differential diagnosis must "take serious account of other potential causes," Westberry, 178 F.3d at 265, and if a plausible cause has not been considered, the physician must be able provide a reasonable basis for ruling it out. See Turner v. Iowa Fire Equip. Co., 229 F.3d 1202, 1209 (8th Cir. 2000); Kannankeril v. Terminix Int'l., Inc., 128 F.3d 802, 808 (3d Cir. 1997); Munafo v. Metro. Transp. Auth., Nos. 98 CV-4572, 00-CV-0134, 2003 WL 21799913, *18 (E.D.N.Y. Aug. 4, 2003).

[4] Luchini did not thoroughly investigate Baker's non-occupational activities before concluding that he developed CTS at work, but was able to discount Baker's martial arts activities as a potential cause when it was raised by Metro-North.

Metro-North emphasizes that Luchini has not quantified Baker's on-the-job exposure to occupational risks associated with CTS, such as the number of repetitive movements and amount of force required to perform his duties. Luchini has testified that it is unnecessary to quantify Baker's exposure in order to reliably determine the cause of his CTS because there is no known dose/response relationship. (Tr. 10/9/01 22-24.) A flaw in an expert's analysis renders his or her opinion inadmissible if it is so large that he or she lacks "good grounds" for the opinion. See Amorgianos v. Nat'l R.R. Passenger Corp., 303 F.3d 256, 267 (2d Cir. 2002) (quoting In re Paoli R.R. Yard PCB Litig., 35 F.3d 717, 746 (3d Cir. 1994). On the present record, I conclude that Luchini's failure to quantify Baker's exposure before forming an opinion on causation affects the weight of his testimony, not its admissibility. See Kudabeck v. Kroger Co., 338 F.3d 856, 861 (8th Cir. 2003); Hardyman v. Norfolk & Western Rwy. Co., 243 F.3d 255, 262 (6th Cir. 2001).

Rader-Smith

Rader-Smith's opinion on medical causation is based on her use of the same methodology employed by Dr. Luchini, differential diagnosis. Unlike Dr. Luchini, however, she does not assess medical causation in her out-of-court work and has no expertise in making such assessments. (Dep. 13-17, 30-31, 79-80.) Courts are divided on whether an ergonomist is qualified to render an opinion on medical

causation. Compare Magdaleno v. Burlington Northern R.R., 5 F. Supp. 2d 899, 906 (D. Colo. 1998) (ergonomist not qualified to offer opinion that plaintiff's work caused CTS); with Hardyman, 243 F.3d at 265-66 (trial court improperly excluded testimony of ergonomist that plaintiff's work caused CTS). There is no need to decide whether Rader-Smith is qualified to testify about medical causation because, even assuming she is, flaws in her analysis render her opinion on that issue in this case inadmissible.

Rader-Smith's analysis appears to differ substantially from the rigorous analysis an expert in her field would employ in the course of his or her work. Two differences are particularly important. She did not quantify Baker's exposure to the known risk factors associated with his job, although she acknowledges that "leading ergonomists in the field will take measurements for measuring ergonomic risks." (Tr. 10/9/01 48; Dep. 188, 473-74.). In addition, she did not ascertain the rest period between Baker's exposure to the recognized risks. (Dep. 243-45.)

Plaintiff offers no evidence that experts in ergonomics determine medical causation without quantifying the individual's exposure to known risk factors and taking account of rest periods. In fact, Rader-Smith has testified that she knows of no such study. (Dep. 466-67.) On this record, then, I conclude that Metro-North's objection to her opinion on the specific cause of plaintiff's CTS

must be sustained.[5]

This ruling does not preclude plaintiff from offering opinion testimony by Rader-Smith on general causation. In other words, she can testify that plaintiff was exposed to ergonomic risk factors in the course of his work and that these risk factors have been linked to CTS.

Conclusion

Accordingly, Baker's motion in limine [Doc. # 45] is denied and Metro-North's objection [Doc. # 44] to the Magistrate Judge's ruling [Doc. # 19] is sustained in part.

So Ordered.

Dated at Hartford, Connecticut this 23rd day of October 2003.

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Robert N. Chatigny
United States District Judge

[5] The cases cited by Baker are not to the contrary. In Hardyman, the ergonomist "in fact did quantify the number of risks present in Plaintiff's job and the amount of Plaintiff's exposure to these factors, explaining in detail the number of repetitions and pounds of force required for each of Plaintiff's job tasks". See Hardyman, 243 F.3d at 263-64. In Kraus v. Metro-North Commuter R.R. Co., No. 97 Civ. 8353 (S.D.N.Y. June 16, 1999), the ergonomist addressed one specific task, hand-punching railroad tickets, and conducted a physical examination of the plaintiff and performed an assessment of the tool itself and the plaintiff's use of the tool.