

FINAL AWARD ALLOWING COMPENSATION
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 05-039516

Employee: Maria Alamo
Employer: Adecco
Insurer: American Home Assurance
Date of Accident: May 9, 2005
Place and County of Accident: St. Louis, Missouri

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by section 287.480 RSMo. Having reviewed the evidence and considered the whole record, the Commission finds that the award of the administrative law judge is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated November 2, 2006. The award and decision of Administrative Law Judge Kathleen M. Hart, issued November 2, 2006, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 22nd day of March 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Dependents: n/a

Employer: Adecco

Additional Party: n/a

Insurer: American Home Assurance

Hearing Date: August 24, 2006

Before the
**Division of Workers'
Compensation**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Checked by: KMH

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: May 9, 2005
5. State location where accident occurred or occupational disease was contracted: St. Louis
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
7. Did employer receive proper notice? Yes
8. Did accident or occupational disease arise out of and in the course of the employment? Yes
9. Was claim for compensation filed within time required by Law? Yes
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted:
Claimant injured her left hand when a drill punctured the web space between her thumb and index finger.
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Left Hand
14. Nature and extent of any permanent disability: 7 ½%
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$1,054.00

Employee: Maria Alamo

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17. Value necessary medical aid not furnished by employer/insurer? None
18. Employee's average weekly wages: \$278.67
19. Weekly compensation rate: \$185.78/\$185.78
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable:

13.125 weeks of permanent partial disability from Employer

\$2,438.36

2 weeks of disfigurement from Employer \$ 371.56

22. Second Injury Fund liability: No

TOTAL: \$2,809.92

23. Future requirements awarded: None

Said payments to begin immediately and to be payable and be subject to modification and review as provided by law.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Elizabeth Ituarte

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Maria Alamo

Injury No.: 05-039516

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: Adecco

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: n/a

Insurer: American Home Assurance

Checked by: KMH

A hearing was held on the above captioned matter August 24, 2006. Attorney Elizabeth Ituarte represented Maria Alamo (Claimant). Attorney Martin Klug represented Adecco (Employer).

STIPULATIONS

The parties stipulated to the following:

1. Claimant was injured May 9, 2005 while in the course and scope of her employment for Employer.
2. Employer and Claimant were operating under the provisions of the Missouri workers' compensation law. Employer's liability was fully insured by American Home Assurance. Employer had notice of the injury and a claim for

compensation was timely filed.

3. Claimant's average weekly wage was \$278.67 entitling her to compensation rates of \$185.78/\$185.78. Claimant has received no temporary benefits and has received \$1054.00 in medical benefits.

The sole issue to be resolved is the nature and extent of Claimant's permanent partial disability.

FINDINGS OF FACT

Based on the competent and substantial evidence, I find:

1. Claimant is a 39 year-old female who injured her non-dominant left hand while operating a drill at work on May 9, 2005. The drill slipped and punctured the web space between her left thumb and index finger.
2. Claimant was immediately taken to Barnes Care where she was seen twice for treatment. Her laceration was repaired and she was released.
3. Due to complaints of pain, Employer sent Claimant to Dr. Cabbabe for treatment. He performed a cortisone injection to relieve Claimant's pain. Claimant testified this injection did not relieve her symptoms. Dr. Cabbabe felt Claimant did not put forth effort during her grip strength tests, and he found she did not complain of pain when he squeezed the area of her injury. He released Claimant and assessed her disability.
4. Claimant's attorney then sent her to Dr. Schlafly. He found Claimant had atrophy in the web space between her index finger and thumb. He found decreased pinch and grip strength and decreased flexion of her thumb. He felt her pain was created by her disuse of her hand, and he thought she would benefit from some physical therapy to strengthen and desensitize her hand. He also diagnosed reflex sympathetic dystrophy (RSD) due to a temperature difference between her hands.
5. Employer sent Claimant back to Dr. Cabbabe who ordered physical therapy. Claimant testified this therapy did not help much. Dr. Cabbabe noted very little progress from the therapy and released Claimant.
6. Following this treatment, Claimant continued to work for Employer for several months. She worked full time without medical restrictions. Her duties involved taping boxes closed, sweeping, and working in the molding department. She testified she modified the way she held boxes due to pain in her hand.
7. Employer's Branch Manager, Bob Beeler, testified. He has been with Employer for nine years. He confirmed Claimant worked in the same department after her injury with no restrictions or change in her job duties and with no absences related to her left hand.
8. Mike Cooper, Employer's Molding Manager, also testified. Claimant worked in this department before and after her injury. Her job was to remove parts from molding machines and inspect, trim, and package the parts. He noted there was no change in Claimant's duties after her injury. Each employee had quotas and quality control. Mr. Cooper had no problems with Claimant's work before or after her injury. Claimant did not complain to him of any difficulty working after her injury.
9. Claimant was terminated and has not worked since she left Employer.
10. Claimant continues to complain of restricted range of motion when rotating and flexing her thumb. She has pain between her thumb and index finger. She has difficulty picking up soda and juice cans and can not lift a gallon of milk.

RULINGS OF LAW

A permanent partial disability award is intended to cover claimant's permanent limitations due to a work related injury and any restrictions his limitations may impose on employment opportunities. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641,646 (Mo.App.1991)(overruled in part). With respect to the degree of permanent partial disability, a determination of the specific amount of percentage of disability is within the special province of the finder of fact. *Banner Iron Works v. Mordis*, 663 S.W.2d 770,773 (Mo.App. 1983) (overruled in part).

Claimant testified she continues to have pain on a daily basis and feels she has not regained good use of her hand. Claimant had a cortisone injection and several physical therapy visits which she believes did not help. Dr. Schlafly, Claimant's expert, examined her on one occasion. He found atrophy in Claimant's hand and weakness in her grip. He also noted coolness in her left thumb and index finger which he testified indicated a pattern of loss of normal use and "probably" a component of RSD. However, this coolness was not noted in any of the treatment records or physical therapy records. Dr. Schlafly agreed there are multiple conditions that can produce this coolness, but he did not test for any of these conditions. In addition, Claimant did not ask me to feel her hands at trial to verify this condition, and I did not observe any atrophy.

Employer's expert, Dr. Cabbabe, saw Claimant several times. He testified he found no temperature variance in her hands, no evidence of RSD, no tendon or nerve laceration, no atrophy on any of his exams, and no pain reaction when he applied pressure to the injured area. He agreed physical therapy may help with her strength. After several therapy visits, Claimant's strength did not improve. Dr. Cabbabe felt Claimant was not putting effort into her therapy and released her from treatment.

After giving consideration to the entire record and based on the testimony, the competent and substantial evidence presented and the applicable law, I find Claimant sustained a 7.5% PPD to her left hand with 2 weeks of disfigurement and is thus entitled to \$2,809.92 in compensation.

Date: _____

Made by: _____

KATHLEEN M. HART
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secrest
Director
Division of Workers' Compensation