

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

Injury No.: 05-141034

Employee: Stephanie Bosch

Employer: Reuters America

Insurer: Ace American Insurance Company

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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated September 24, 2009, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Kathleen M. Hart, issued September 24, 2009, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 4th day of February 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

:
Attest:

Secretary

AWARD

Employee: Stephanie Bosch

Injury No.: 05-141034

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: Reuters America

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

Additional Party: n/a

Insurer: Ace American Insurance Co

Hearing Date: July 13, 2009

Checked by: KMH

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No
2. Was the injury or occupational disease compensable under Chapter 287? No
3. Was there an accident or incident of occupational disease under the Law? No
4. Date of accident or onset of occupational disease: alleged June 30, 2005
5. State location where accident occurred or occupational disease was contracted: St. Louis County
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? No
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 alleges she developed carpal tunnel syndrome as a result of her work.
12. Did accident or occupational disease cause death? No Date of death? n/a
13. Part(s) of body injured by accident or occupational disease: alleged left hand
14. Nature and extent of any permanent disability: None
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None

Employee: Stephanie Bosch

Injury No.: 05-141034

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: \$769.23
- 19. Weekly compensation rate: \$512.84/\$365.08
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable: None

22. Second Injury Fund liability: No

TOTAL: NONE

23. Future requirements awarded: n/a

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 n/a of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Stephanie Bosch

Injury No.: 05-141034

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: Reuters America, Inc.

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

Additional Party: n/a

Insurer: Ace American Insurance Company

Checked by: KMH

A hearing was held on the above captioned matter July 13, 2009. Stephanie Bosch (Claimant) was represented by attorney Joseph Montecillo. Reuters America (Employer) was represented by attorney Kent Schultz. The Second Injury Fund was not a party to the case.

Claimant alleges she developed carpal tunnel syndrome as a result of her work for Employer. Employer denies all liability and has made no payments to date.

All objections not expressly ruled upon in this award are overruled to the extent they conflict with this award.

STIPULATIONS

The parties stipulated to the following:

1. Employer and Claimant were operating under the provisions of the Missouri Workers' Compensation law on the alleged date of injury.
2. Employer's liability was fully insured by Ace American Insurance Company.
3. Employer had notice of the alleged injury and a claim for compensation was timely filed.
4. Claimant's average weekly wage was \$769.23 yielding TTD and PPD rates of \$512.84 and \$365.08 respectively.

ISSUES

The parties stipulated the issues to be resolved are as follows:

1. Occupational disease
2. Medical causation
3. Future medical care
4. Future TTD

5. PPD

FINDINGS OF FACT

Based upon the competent and substantial evidence, my observations of Claimant at trial, and the reasonable inferences to be drawn therefrom, I find:

1. Claimant is a 37 year-old female who began working full time for Employer as a temporary employee in June 2004. Employer is a news agency. Their St. Louis office handles the computer programming for Employer's website.
2. Claimant's first position was Human Resources Recruiter's Assistant. Her primary duty was to go to internet job boards and pull resumes for the recruiters. She printed the resumes and gave them to the recruiter with an explanatory memo as to why the candidate fit the job profile. She is left handed and used the mouse with her left hand when searching the internet. She reviewed approximately 100 candidates a day and pulled 25-50 resumes a day.
3. In August 2004, Claimant became pregnant. At some point during her pregnancy, Claimant was diagnosed with gestational diabetes.
4. In October 2004, she was promoted to Human Resource Administrator. She worked from 7:30 am through 5:30 pm, five days a week. She helped the recruiters and worked for the head of HR. She was responsible for checking their emails in the morning, and corresponding with them via email throughout the day. She worked in a cube with a computer and a keyboard which was on the same work surface as the computer monitor. She used her left hand when working with the computer, mouse, printer and telephone. Her primary function was to enter new hire paperwork. She took their multipage applications and entered them manually into the computer. She typically entered information for 5-10 new hires a week. She also pulled data from the company database and transferred it to a spreadsheet for the head of HR. This involved a lot of pointing, clicking, dragging the mouse, and keyboard entry. Claimant was on the computer all day, except while at lunch. Claimant worked in this capacity until April 2005.
5. In February 2005, Claimant began to have aching in her left wrist. She developed sharp pain down her forearm and into her left hand. She had numbness in her left thumb, forefinger and middle finger. Her complaints subsided at night. She had no right hand complaints at that time. She did not report any complaints to Employer, and did not seek medical attention. Claimant testified she didn't think much of her complaints then because they came and went.
6. In April 2005, Claimant was put on bedrest and stopped working for Employer. Claimant's baby was born May 13, 2005. She took 6 weeks of maternity leave and did not do any work for Employer at home during that time. In June 2005, she resigned her position with Employer to stay home with her daughter.

7. The night after giving birth, Claimant woke up and her entire left hand was numb. Her complaints were so severe, she thought she had a stroke. She called the nurse, and no treatment was provided for her hand. She was released from the hospital within 48 hours, and her hand complaints improved a bit.
8. Approximately six weeks later, Claimant went to her primary care physician (PCP) because her left hand was not improving. Claimant testified her hand symptoms became daily and chronic after giving birth. On June 10, 2005, her PCP performed nerve studies and diagnosed her with CTS. Her complaints have continued and have not gone back to the way they were before her daughter was born.
9. Claimant has not worked outside the home since she left Employer. She continues to have complaints in her left hand. Claimant is 5'5" tall and weighs approximately 140 pounds. Aside from her pregnancy, her weight has not fluctuated in several years. She has no hobbies involving repetitive use of her hands. She is on no medication for her hands. She occasionally uses a brace she purchased from Walgreen's. She has had no treatment for her hands. She has no thyroid condition, diabetes, or other medical condition that could cause carpal tunnel syndrome.
10. Claimant continues to be awakened with pain and numbness in her left hand two to three nights a week. She has decreased grip strength and difficulty squeezing with her left hand. She also notices left hand numbness when driving for a long time. Her left hand complaints are worse than her right hand, and she requests treatment.
11. Claimant's expert, Dr. Berkin, noted Claimant developed hand numbness in February 2005 but did not seek treatment because she felt her complaints were related to her pregnancy. He indicated Claimant's symptoms developed during or immediately after her pregnancy, and she worked for Employer throughout her pregnancy. He opined since her complaints were in one hand and did not improve following delivery, her pregnancy was a minor, contributing factor and her hand intensive activities at work were the prevailing factor in causing her CTS.
12. Employer's expert, Dr. Sudekum, is a board certified plastic and reconstructive surgeon. He noted the first indication in any medical records of hand complaints was May 20, 2005. He opined Claimant's CTS developed during or immediately after her pregnancy, and her work for Employer was not a substantial causal factor in development of her CTS. He opined her job did not pose a very high risk for the development of CTS, and her work was simply a minor triggering or contributing factor.
13. Claimant is credible.

RULINGS OF LAW

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented and the applicable law, I find the following:

1. Claimant’s CTS is not medically and causally related to her work.

Both experts agree Claimant has CTS, CTS can develop during pregnancy due to fluid retention, and there is no indication in the medical records that Claimant had any significant symptoms during the course of her employment with ER. There is no dispute Claimant’s symptoms did not begin until six months into her pregnancy, and her symptoms worsened once she gave birth.

An occupational disease is compensable if it is clearly work related and meets the requirements of an injury which is compensable as provided in subsections 2 and 3 of section 287.020. Section 287.067 RSMo. The claimant must establish, generally through expert testimony, the probability that the claimed occupational disease was caused by conditions in the work place. *Dawson v. Associated Elec.*, 885 S.W.2d 712, 716 (Mo. App. 1994). The claimant bears the burden of proving a direct causal relationship between the conditions of her employment and the occupational disease. *Jacobs v. City of Jefferson*, 991 S.W.2d 693, 696 (Mo. App. 1999).

While I believe Claimant’s work was a minor factor in the development of her CTS, I find the chronology of the development of her complaints significant. Claimant had some symptoms in February 2005. However, it was not until she had separated from her employment and progressed further in her pregnancy that her symptoms became severe. I find the opinion of Dr. Sudekum more persuasive than that of Dr. Berkin. I find Claimant’s work was not a substantial factor in the development of her CTS and the need for treatment.

The remaining issues are moot.

Date: _____

Made by: _____

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

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation