

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

Injury No.: 03-082772

Employee: James Brown  
Employer: Trilla Nesco  
Insurer: Charter Oak Fire Insurance Company  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Dismissed)  
Date of Accident: Alleged April 16, 2003  
Place and County of Accident: Alleged St. Louis

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 August 9, 2005, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Margaret D. Landolt, issued August 9, 2005, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 5<sup>th</sup> day of October 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

\_\_\_\_\_  
Alice A. Bartlett, Member

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

**AWARD**

Employee: James Brown

Injury No.: 03-082772

Dependents: N/A Before the  
**Division of Workers'**  
Employer: Trilla Nesco **Compensation**  
Department of Labor and Industrial  
Additional Party: N/A Relations of Missouri  
Jefferson City, Missouri  
Insurer: Charter Oak Fire Insurance Co.  
Hearing Date: July 18, 2005 Checked by: MDL:tr

### 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? Yes
4. Date of accident or onset of occupational disease: April 16, 2003
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? N/A
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:  
Employee was using his upper extremity in a repetitive fashion.
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: Right upper extremity
14. Nature and extent of any permanent disability: -0-
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-

Employee: James Brown Injury No.: 03-082772

17. Value necessary medical aid not furnished by employer/insurer? -0-
18. Employee's average weekly wages: Unknown
19. Weekly compensation rate: \$226.67/\$226.67
20. Method wages computation: Stipulation

### COMPENSATION PAYABLE

21. Amount of compensation payable: None
22. Second Injury Fund liability: No

TOTAL: -0-

23. Future requirements awarded: None

Said payments to begin N/A 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:

N/A

## FINDINGS OF FACT and RULINGS OF LAW:

Employee:	James Brown	Injury No.: 03-082772
Dependents:	N/A	Before the <b>Division of Workers' Compensation</b>
Employer:	Trilla Nesco	Department of Labor and Industrial Relations of Missouri
Additional Party:	N/A	Jefferson City, Missouri
Insurer:	Charter Oak Fire Insurance Co.	Checked by: MDL:tr

### PRELIMINARIES

A hearing was held on July 18, 2005. Ms. Ann Dalton represented James Brown ("Claimant"). Mr. Jeff Benoist represented Trilla Nesco ("Employer") and its Insurer, Charter Oak Fire Insurance Co. The Second Injury Fund was dismissed from the case prior to the hearing. Ms. Dalton requested a fee of 25% of Claimant's award.

### STIPULATIONS

The parties stipulated that Claimant was an employee of Employer; venue is proper in the City of St. Louis; and the Claim for Compensation was timely filed. The parties further stipulated that Bob Keefe, attorney for Claimant in prior Claims for Compensation, possessed records from Concentra Medical Center (Exhibit A) at the time the Stipulation for Compromise Settlement for Injury Number 03-038183 was prepared on July 29, 2003 (Exhibit 1).

The issues for determination by hearing are whether Claimant sustained any permanent partial disability as a result of the alleged injury; and whether Claimant is barred from bringing this Claim for Compensation as a result of the Stipulation for Compromise Settlement for Injury Number 03-038183.

### FINDINGS OF FACT

Based upon the competent and substantial evidence, I find:

Claimant is a 45-year-old right-handed individual who worked for Employer on April 16, 2003. Claimant worked in production, which required him to use an air gun. As a result of using this air gun, Claimant developed right wrist and forearm pain.

Employer sent Claimant to Concentra Medical Center for right wrist and forearm pain on April 17, 2003. Claimant presented with multiple complaints to his right arm. Upon examination, Claimant reacted with pain with almost any extension of the wrist. A neurometrix test was done which showed the right median and motor nerve to be completely normal. Dr. Homan gave Claimant a wrist brace, diagnosed right hand pain, and released Claimant to return to work full duty and discharged Claimant from care. Dr. Homan had no explanation for Claimant's multiple complaints in his arm.

Claimant followed up at Concentra on April 28, 2003, complaining of continued weakness, numbness and tingling in his right thumb and forearm. Claimant had been off work for ten days because he did not feel he could go back to the air gun job. Claimant was diagnosed with right forearm and wrist tenosynovitis and asked to follow up in two weeks. The nurse practitioner who examined Claimant stated, "there is very little objective finding for this diagnosis and it is surprising that after ten days of rest, it is surprising to find this degree of weakness, however, strength testing is subjective."

On or about May 7, 2003, Claimant filed a Claim for Compensation under Injury number 03-038432 alleging, "trauma causing permanent injury. Employee sustained a burn to his wrist while working." The date of accident/occupational disease was January 2003. Claimant also alleged that he "needed and needs medical treatment for his injury".

Claimant returned to Concentra on May 12, 2003, with complaints of pain and weakness in his right forearm. Claimant was diagnosed by Dr. Homan with right forearm weakness. Dr. Homan could not find any abnormality and discharged Claimant again to full duty. Claimant testified that he did not receive any further treatment for his right arm after May 12, 2003.

On July 29, 2003, Claimant entered into a Stipulation for Compromise Settlement in Injury Number 03-038183 for a March 6, 2003, injury to his left ring finger. As part of the Stipulation, Claimant agreed to dismiss Injury Numbers 03-038432 and 03-038433 with prejudice. The Stipulation also stated that the "settlement resolves all issues between employee and employer/insurer with respect to employee's left and right upper extremity." Claimant testified that he read this paragraph before signing the Stipulation. Claimant testified that he thought the Stipulation involved only a burn to his right arm.

The parties stipulated at hearing that Claimant's attorney who handled the prior Claims for Compensation and Stipulation for Compromise Settlement had the Concentra medical records of April 17, 2003, April 28, 2003, and May 12, 2003, in his possession at the time the Stipulation was entered into on July 29, 2003.

On or about September 5, 2003, Claimant filed this Claim for Compensation alleging injury to his right upper extremity with a date of injury of April 16, 2003.

Dr. Bruce Schlafly examined Claimant on November 3, 2003, at the request of his attorney. Dr. Schlafly indicated that his diagnosis was similar to the one given by the Concentra clinic, and diagnosed Claimant with tendonitis and tenosynovitis of the right wrist and forearm. Dr. Schlafly indicated that Claimant needed physical therapy three times a week for four weeks and that Claimant had sustained a 20% permanent partial disability of the right upper extremity at the level of the forearm.

Dr. Sandra Tate examined Claimant on February 9, 2004, at the request of Employer. Dr. Tate noted symptom magnification on physical exam and inconsistencies in behavior. Dr. Tate noted that Claimant had high complaints of pain even though he had not worked over the ten months prior to seeing her. Dr. Tate opined that Claimant had reached maximum medical improvement and that Claimant could work unrestricted. Dr. Tate did not find any permanent partial disability.

#### RULINGS OF LAW

Based on my observations of Claimant at hearing, my comprehensive review of the evidence, and the application of Missouri law, I find:

Claimant is barred from bringing this Claim for Compensation because when Claimant entered into the Stipulation for Compromise Settlement on July 29, 2003, under Injury Number 03-038183, he agreed to settle or resolve all injuries with regard to his right upper extremity.

Claimant admitted that he read the paragraph wherein he agreed that the settlement resolved all issues regarding his right upper extremity. Claimant's attorney at the time this settlement was reached had the medical records from Concentra regarding his right wrist treatment. At the time this Stipulation was prepared Claimant had completed the treatment for his right wrist pain.

Permanent Partial Disability

I find that even if Claimant were not barred from bringing this claim, Claimant has not sustained any permanent partial disability as a result of this injury. Dr. Homan, Claimant's treating doctor, could not find any explanation for Claimant's complaints. All objective testing performed on Claimant was negative. Claimant's subjective complaints were out of proportion with the objective findings. Dr. Tate noted symptom magnification when she examined Claimant. Claimant continued to have consistent complaints of pain even though he had not worked in any capacity in the previous ten months. Claimant received only three days of examinations at Concentra and all testing was negative. Although Dr. Schlafly found 20% permanent partial disability, I find Dr. Schlafly's opinion to be against the weight of credible evidence.

Therefore, I find that Claimant is not entitled to any permanent partial disability.

Date: \_\_\_\_\_ Made by: \_\_\_\_\_

Margaret D. Landolt  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Patricia "Pat" Secret  
*Director*  
*Division of Workers' Compensation*