

TEMPORARY OR PARTIAL AWARD  
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 05-021701

Employee: Ralph Brown  
Employer: Onyx Waste  
Insurer: Insurance Company State of Pennsylvania  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)  
Date of Accident: March 15, 2005  
Place and County of Accident: St. Louis City, 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, which provides for review concerning the issue of liability only. Having reviewed the evidence and considered the whole record concerning the issue of liability, the Commission finds that the award of the administrative law judge in this regard 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 and adopts the award and decision of the administrative law judge dated July 2, 2007.

This award is only temporary or partial, is subject to further order and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of section 287.510 RSMo.

The award and decision of Administrative Law Judge Linda J. Wenman, issued July 2, 2007, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 25<sup>th</sup> day of September 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

---

William F. Ringer, Chairman

---

Alice A. Bartlett, Member

---

John J. Hickey, Member

Attest:

---

Secretary

## TEMPORARY OR PARTIAL AWARD

Employee: Ralph Brown Injury No.: 05-021701  
Dependents: N/A Before the  
Employer: Onyx Waste **Division of Workers'**  
Additional Party: Second Injury Fund (open) **Compensation**  
Insurer: Insurance Company State of PA Department of Labor and Industrial  
Hearing Date: April 18, 2007 Relations of Missouri  
Checked by: LJW:tr Jefferson City, Missouri

### 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: March 15, 2005
5. State location where accident occurred or occupational disease contracted: St. Louis City, MO
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 happened or occupational disease contracted: While performing his daily job duties for Employer, Claimant developed bilateral hand numbness and bilateral knee pain.
12. Did accident or occupational disease cause death? No
13. Parts of body injured by accident or occupational disease: Bilateral hands and bilateral knees.
14. Compensation paid to-date for temporary disability: None
15. Value necessary medical aid paid to date by employer/insurer? None
16. Value necessary medical aid not furnished by employer/insurer? \$1,123.88

Employee: Ralph Brown Injury No.: 05-021701

17. Employee's average weekly wages: \$834.90

18. Weekly compensation rate: \$556.60 / \$354.05

19. Method wages computation: Stipulated

### COMPENSATION PAYABLE

20. Amount of compensation payable:

Unpaid medical expenses: \$1,123.88\*

weeks of temporary total disability (or temporary partial disability) unknown

TOTAL: \$1,123.88\*

\* OWED TO DATE

Each of said payments to begin immediately and be subject to modification and review as provided by law. This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

IF THIS AWARD IS NOT COMPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.

The compensation awarded to the claimant shall be subject to a lien in the amount of 25% of all payments in favor of the following attorney for necessary legal services rendered to the claimant: Clare R. Behrle

## FINDINGS OF FACT and RULINGS OF LAW:

Employee: Ralph Brown

Injury No.: 05-021701

Dependents: N/A

Before the  
**Division of Workers'  
Compensation**

Employer: Onyx Waste

Department of Labor and Industrial

Additional Party: Second Injury Fund (open)

Relations of Missouri

Jefferson City, Missouri

Insurer: Insurance Company State of PA

Checked by: LJW:tr

## **PRELIMINARIES**

The above referenced Workers' Compensation claim was heard by the undersigned Administrative Law Judge on April 18, 2007. Ralph Brown seeks issuance of a temporary award providing medical treatment for his hands and knees. Briefs were received and the case was formally submitted on May 18, 2007. Attorney Clare Berhle represented Ralph Brown (Claimant). Onyx Waste, (Employer) was insured by Insurance Company of the State of Pennsylvania, and represented by Attorney Robert Hendershot. Second Injury Fund (SIF) will remain open. Claimant's award is subject to a child support lien filed by the Missouri Division of Child Support Enforcement.

Prior to the start of the hearing, the parties identified the issues for disposition in this case: occupational disease; medical causation; liability of Employer for past medical expenses; medical care as relates to issuance of a temporary award; and temporary total disability (TTD) as relates to issuance of a temporary award. Hearing venue is correct, and jurisdiction properly lies with the Missouri Division of Workers' Compensation.

Claimant offered Exhibits A-E, and Employer offered Exhibit 1. All exhibits were admitted into the record without objection. Any markings contained within any exhibit were present when received, and the markings did not influence the evidentiary weight given the exhibit. Any objections not expressly ruled on in this award are overruled.

### **Findings of Fact**

All evidence presented has been reviewed. Only testimony necessary to support this award will be reviewed and summarized.

1. Claimant is forty-three years old, and worked for Employer as a boom truck driver for approximately eleven years. Claimant began his employment working residential trash removal, and for the last 3 ½ years as a container delivery driver. Claimant's job duties included delivery and removal of commercial dumpsters, and repair of dumpsters. Claimant covered seven

counties, drove 200-300 miles daily, and delivered 10-54 dumpster a day. Claimant was also required to inspect and clean his truck.

2. At each stop Claimant would climb in and out of his truck 2-3 times. Claimant's truck was approximately 2 ½-3 feet off the ground, had two steps, and two handrails that Claimant would use to pull himself into the truck. Claimant was also required to enter the dumpster to stomp down trash, and to push/pull the dumpster into position to be emptied. Claimant used hydraulic levers located near his right hand to empty the dumpster into his truck.

3. When repairing dumpsters, Claimant used cutting torches, sledge hammers, hacksaws, wrenches, and welding equipment. Claimant also had to assemble new dumpsters by applying wheels and lids. Claimant would assemble approximately 20-30 new containers a month.

4. During December 2004 and January 2005, Claimant began to experience bilateral hand numbness and loss of grip. Claimant also began to notice increased knee pain, with pain worse in his right knee versus his left knee. By March 2005, Claimant requested medical care from Employer. Employer denied his request, and Claimant sought medical care on his own.

5. On March 21, 2005, Claimant's physician sent him for an x-ray of his right knee, and for a nerve conduction velocity study (NCV). Claimant's right knee x-ray was read as showing unremarkable bony structures, and a questionable minimal joint effusion. Claimant's NCV demonstrated mild evidence of median nerve entrapment of the bilateral carpal tunnels affecting both motor and sensory fibers.

6. As of hearing, Claimant continues to experience bilateral hand numbness, especially at night, which affects his sleeping and ability to drive. Claimant has a loss of grip strength, and pain when using his hands in repetitive motion. Claimant is right hand dominant, but now finds his left hand to be stronger than his right hand. Claimant also experiences right knee pain once or twice daily, left knee pain every couple of weeks, and his right knee has given way twice.

7. Claimant used to work on his own cars, installing stereos, working on the car's interior, and changing oil and brakes. Claimant stopped doing "heavy" auto work 1-1 ½ years ago. Claimant purchased an ATV during February or

March 2005, rode it for approximately one hour every day, stopped riding during 2006, but already had hand symptoms before he purchased the ATV. Claimant purchased a ski boat to use in fishing last summer, drives it at speeds of 25-30 mph, and has to tie it onto a trailer for transport.

8. Dr. Cohen examined Claimant on October 27, 2005. Dr. Cohen found abnormalities of Claimant's grip strength, Claimant's ability to squat, and found Claimant to have a positive McMurray's test of his right knee. Dr. Cohen diagnosed an overuse disorder of Claimant's upper and lower extremities. He opined Claimant's history was suggestive of bilateral carpal or cubital tunnel, Claimant had degenerative joint disease of his knees and/or meniscus tears. Dr. Cohen felt Claimant needed to be examined by orthopedic and hand surgeons. Dr. Cohen also felt Claimant needed repeat EMG/NCV testing of his upper extremities, and MRIs of both knees. Dr. Cohen opined Claimant's work was a substantial factor in causing injury to his arms and knees. Dr. Cohen did not find Claimant to be at maximum medical improvement (MMI).

9. Dr. Cantrell examined Claimant on August 7, 2006. Upon examination, Dr. Cantrell noted Claimant had a positive Phalen's sign that only produced numbness to his wrists, but not to his fingers. Claimant had mild crepitus in his right knee greater than his left knee. Dr. Cantrell obtained an x-ray of Claimant's cervical spine and right knee. Dr. Cantrell interpreted the right knee x-ray as demonstrating lateral tilting of Claimant's patella. The cervical spine x-ray showed no acute bony abnormalities and no significant degenerative changes. Dr. Cantrell opined he did not consider Claimant's work to be highly repetitive, and he did not consider Claimant's work activities to place Claimant at risk of developing carpal tunnel syndrome (CTS). Dr. Cantrell did not find Claimant's complaint of entire arm numbness to be a symptom that was consistent with CTS, and did not find his arm complaints to be work related. Nor did Dr. Cantrell find Claimant's knee complaints to be work related. Dr. Cantrell opined Claimant's right knee pain was the result of a biomechanical abnormality.

### **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 of the State of Missouri, I find the following:

Claimant alleges two occupational diseases that arose from his work duties. Section 287.067 RSMo., defines occupational disease as:

... an identifiable disease arising with or without human fault out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the diseases follow as an incident of an occupational disease as defined in this section. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.”

In cases of alleged occupational disease, the disease must be occupationally induced, rather than an ordinary disease of life. *Hayes v. Hudson Foods, Inc.*, 818 S.W.2d 296 (Mo.App.1991) (overruled on other grounds). An occupational disease is not compensable if work is merely “a triggering or precipitating factor”. §287.067.2 RSMo. The exposure to the disease must be greater or different from disease exposure to the general public, and there must be a disease/work link common to the specific job or profession. *Polavarapu v. General Motors Corp.*, 897 S.W.2d 63 (Mo.App. 1995). The work must be a substantial factor in the cause of the resulting medical condition or disability. §287.020.2 RSMo. A causative factor may be substantial even if it is not the primary or most significant factor. *Cahall v. Cahall*, 963 S.W.2d 368, 372 (Mo.App. 1998) (overruled on other grounds). Further, there is no minimum percentage set out in the Workers' Compensation Law defining “substantial factor.” *Id.* Whether employment is a substantial factor in causing the injury is a question of fact. *Sanderson v. Porta-Fab Corp.*, 989 S.W.2d 599, 603 (Mo.App. 1999) (overruled on other grounds).

Determinations of this kind require the assistance of expert medical testimony. Medical causation not within lay understanding or experience requires expert medical evidence. *Wright v. Sports Associated, Inc.*, 887 S.W.2d 596 (Mo.banc 1994) (overruled on other grounds). The weight to be accorded an expert's testimony should be determined by the testimony as a whole and less than direct statements of reasonable medical certainty will be sufficient. *Choate v. Lily Tulip, Inc.*, 809 S.W.2d 102 (Mo.App. 1991) (overruled on other grounds). Two physicians expressed their opinion regarding whether Claimant's work was a substantial factor in his development of arm and knee injuries. Neither physician was a treating physician, or knew every aspect of Claimant's working day. However, Dr. Cantrell

appears to discount the nature of Claimant's work, and yet assign increased significance to Claimant's recreational activities when reaching the conclusion Claimant's arm complaints are not work related. Claimant does own an ATV, but he purchased it after his arm symptoms began. Claimant's auto repair work may be a factor, but Claimant worked on his car on weekends, as compared to performing his work duties five days a week. Regarding Claimant's knee complaints, Dr. Cantrell interpreted his own x-ray, and found lateral patella tilting, a finding not noted by the radiologist on the March 21, 2005, right knee x-ray, which was performed much closer in time to Claimant's request for treatment.

Claimant's job duties are unique to waste management, and are not of the type the general public would be exposed. I find the opinion of Dr. Cohen to be persuasive, and find Claimant's work duties were a substantial factor in his development of bilateral hand and knee complaints. Claimant has met his burden to demonstrate he sustained occupational diseases that arose out of and in the course and scope of his employment, and that the need for medical treatment is medically causally related to his work duties.

Claimant requests total reimbursement of medical expenses in the amount of \$4,196.88. Section 287.140.1 RSMo., provides that an employer shall provide such medical, surgical, chiropractic, ambulance and hospital treatment as may be necessary to cure and relieve the effects of the work injury. Additionally, §287.140.3 RSMo., provides that all medical fees and charges under this section shall be fair and reasonable. A sufficient factual basis exists to award payment of medical expenses when medical bills and supporting medical records are introduced into evidence supported by testimony that the expenses were incurred in connection with treatment of a compensable injury. *Martin v. Mid-America Farm Lines, Inc.*, 769 S.W.2d 105 (Mo.banc 1989).

Claimant alleges liability of Employer for: radiology charges in the amount of \$44.88; St. Joseph West physician billing in the amount of \$882.00; his personal physician's office visits in the amount of \$197.00; and a St. Joseph West Hospital bill in the amount of \$3,073.00. Copies of itemized medical bills were presented for the radiology charges, hospital physician billing, and personal physician office visits. These itemized bills were supported by the appropriate medical records, and Claimant's testimony. However, the bill from St. Joseph West Hospital, while showing a date of service of March 21, 2005, is not itemized, and it is impossible to know if the total amount would include treatment unrelated to the work injury. While the document is labeled "THIS IS A BILL," in its presented condition I do not find it a reliable document on which to impose liability. Accordingly, I find Employer liable for \$1,123.88 in medical expenses accrued by Claimant in an attempt to cure and relieve the effects of his work related injuries.

Claimant seeks future medical care from Employer to cure and relieve his symptoms. As stated previously, Section 287.140.1 RSMo.(2000), provides that an employer shall provide such medical, surgical, chiropractic, ambulance and hospital treatment as may be necessary to cure and relieve the effects of the workers' injury. I find Employer responsible to provide Claimant with additional medical treatment. I further find Employer is obligated to provide the following treatment: Employer shall select a competent physician(s) and authorize any treatment recommended by the physician(s) regarding Claimant's hands and knees including, but not limited to:

- 1) any tests and procedures as directed by the authorized treating physician(s)
- 2) any medications directed by the authorized treating physician(s)
- 3) any splints, slings, braces or similar devices ordered by the authorized treating physician(s)
- 4) any necessary surgical procedures ordered by the authorized treating physician(s), including all doctor, hospital, diagnostic and medical costs
- 5) all post-operative and rehabilitative care as directed by the authorized treating physician(s).

Additionally, Claimant seeks TTD benefits regarding future medical treatment. TTD benefits are intended to cover a period of time from injury until such time as claimant can return to work. *Phelps v. Jeff Wolk Construction Co.*, 803 S.W.2d 641 (Mo.App. 1991) (overruled in part). Pursuant to this award, Claimant will receive medical intervention for his occupational injuries. He will also be entitled to receive TTD benefits to cover the healing period associated with such treatment, if Claimant is unable to work during that period.

### CONCLUSION

Claimant sustained occupational injuries to his hands and knees that arose out of, and in the course and scope of his employment. Claimant is entitled to receive Workers' Compensation benefits associated with his bilateral hand and knee injuries as described in this award. This is a temporary award, subject to further order, the proceedings are hereby continued, and the case kept open until a final award can be made.

Date: \_\_\_\_\_

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

LINDA J. WENMAN  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
Lucas Boling  
*Acting Director*  
*Division of Workers' Compensation*