

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

Injury No.: 07-087771

Employee: James Burchfield
Employer: Renard Paper Company, Inc.
Insurer: Travelers Commercial Casualty

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo.¹ Having reviewed the evidence, read the briefs, and considered the whole record, the Commission finds that the award of the administrative law judge (ALJ) is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the (ALJ) dated December 28, 2011, as supplemented herein.

Preliminaries

The ALJ found that employee sustained an accident arising out of and in the course of employment on September 7, 2007, when he was hit in the head with a pallet jack. However, the ALJ denied employee's claim because she concluded that employee failed to meet his burden of proving that his work injury caused him to lose his hearing. The ALJ ruled there was no admissible medical evidence establishing that fact.

Employee's primary argument on appeal is that the ALJ erred in ruling there was no admissible evidence to support a finding that the alleged hearing loss was medically causally related to the work injury of September 7, 2007. Employee argues that he offered numerous medical records establishing the medical causal relationship between his hearing loss and the September 7, 2007, work injury.

Discussion

The Court in *Brundige v. Ingelheim*, 812 S.W.2d 200 (Mo. App. 1991) held that "[m]edical causation, not within the common knowledge or experience, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause." *Id.* at 202. This requires employee's medical expert to establish the probability employee's injuries were caused by the work accident. *Selby v. Trans World Airlines, Inc.*, 831 S.W.2d 221, 223 (Mo. App. 1992), overruled on other grounds, *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. 2003).

The ALJ correctly concluded that the cause of hearing loss is not within the common knowledge or experience and, therefore, expert medical evidence is necessary to prove the work accident caused employee's hearing loss.

¹ Statutory references are to the Revised Statutes of Missouri 2007 unless otherwise indicated.

Employee: James Burchfield

At the October 19, 2011, hearing, employee offered several medical records as exhibits without any other foundational evidence. Employee alleged that they establish the cause and effect relationship between employee's hearing loss and the September 7, 2007, accident. Employer objected to all of the exhibits on the basis that the records are hearsay. Employer contended that they are not certified, nor has there been any deposition taken of the doctors whose opinions they contain. In addition, employer objected that there is a lack of foundation to admit the exhibits. The ALJ properly sustained employer's objections.

The records offered by employee included medical opinions. They were offered as proof that employee's hearing loss was medically caused by the September 7, 2007, accident. We find that employee's use of the medical records violated the hearsay rule. Employee attempted to offer the unsubstantiated medical opinions as proof of the matter asserted. Employee failed to prove, or even argue, that the records are admissible under an exception to the hearsay rule. For the foregoing reasons, the ALJ properly sustained employer's objections and found the records inadmissible.

Award

The Commission affirms the award and decision of the ALJ, as supplemented herein.

The award and decision of Administrative Law Judge Margaret D. Landolt, issued December 28, 2011, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 27th day of September 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T

Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: James Burchfield

Injury No.: 07-087771

Dependents: N/A

Employer: Renard Paper Company Inc.

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

Additional Party: N/A

Insurer: Travelers Commercial Casualty

Hearing Date: October 19, 2011

Checked by: MDL

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: September 7, 2007
5. State location where accident occurred or occupational disease was contracted: St. Louis, Missouri
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:
Employee was hit in the head by a stack of pallets
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: N/A
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? Unknown

Employee: James Burchfield

Injury No.: 07-087771

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

COMPENSATION PAYABLE

21. Amount of compensation payable 0

22. Second Injury Fund liability: No

TOTAL:

23. Future requirements awarded: None

Said payments to begin 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: James Burchfield

Injury No.: 07-087771

Dependents: N/A

Before the
Division of Workers'

Employer: Renard Paper Company, Inc.

Compensation

Additional Party: N/A

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

Insurer: Travelers Commercial Casualty

Checked by: MDL

PRELIMINARIES

A hearing was held on October 19, 2011, at the Division of Workers' Compensation in the City of St. Louis, Missouri. James Burchfield ("Claimant") appeared pro se. Renard Paper Co., Inc., and its insurer Travelers Commercial Casualty were represented by Mr. Robert Frayne.

The parties stipulated that on or about September 7, 2007, Claimant was an employee of Employer; venue is proper in the City of St. Louis, Missouri; and the claim was timely filed. Employer has paid no benefits to date. The issues for resolution by hearing are whether Claimant sustained an accident arising out of and in the course of employment on or about September 7, 2007; medical causation; whether Claimant is entitled to Permanent Partial Disability ("PPD") benefits; whether Claimant is permanently and totally disabled; and what is the appropriate rate of compensation.

Claimant offered Exhibits A through J. Employer objected to the introduction of Exhibits A through J. The objections were sustained with respect to Exhibits A, C, D, G, H, I and J. The objections were overruled with respect to Exhibits B, E, and F, and they were received into evidence. Employer offered Exhibit 1 into evidence, and it was received into evidence over Claimant's objection.

SUMMARY OF EVIDENCE

Claimant was working for Employer as a paper driver on Friday, September 7, 2007, picking up empty pallets. While backing up, a pallet jack hit him in the back of his head. After a couple of minutes, Claimant felt nothing and went home. Claimant woke up the next morning, a Saturday, and the side of his face was swollen. Claimant's wife knew something was wrong with Claimant, and called his doctor. She was unable to get an appointment until Tuesday, when she took him to the doctor. After the doctor's appointment on Tuesday, Claimant collapsed, and his wife took him to the hospital. Claimant does not remember the accident. Claimant was unable to work for one month. When he returned to work he was taken off his route and told to sweep the floor in the warehouse.

Claimant testified as a result of the accident he can no longer hear, and has difficulty detecting where sound is coming from. He has to be very careful when he is out in traffic, or he will get hit by a car. The accident totally changed his life.

FINDINGS OF FACT AND RULINGS OF LAW

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

I find Claimant sustained an accident arising out of and in the course of employment on September 7, 2007, when he was hit in the head with a pallet jack. Claimant testified credibly that an accident occurred, and there was no evidence to the contrary.

Claimant failed to meet his burden of proving his work injury of September 7, 2007 caused him to lose his hearing. There was no admissible medical evidence to prove that his work injury of September 7, 2007, when he was hit in the head with a pallet jack, caused him to lose hearing in his ear.

Medical causation, not within the common knowledge or experience, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause.” *Brundige v. Boehringer Ingelheim*, 812 S.W.2d 200, 202 [5] (Mo.App.1991). This requires Employee's medical expert to establish the probability Employee's injuries were caused by the work accident. *Selby v. Trans World Airlines, Inc.*, 831 S.W.2d 221, 223 [4] (Mo.App.1992). *McGrath v. Satellite Sprinkler Systems Inc.*, 877 S.W.2d 704, 708 (Mo.App. E.D. 1994)(overruled on other grounds by *Hampton v. Big Boy Steel Erection* 121 S.W.3d 220 (Mo.2003))

Because the cause of hearing loss is not within the common knowledge or experience of the court, expert medical evidence is necessary to prove the work accident caused Claimant’s hearing loss, and Claimant failed to meet his burden of proof.

Because I do not find Claimant met his burden of proof with respect to medical causation, the remaining issues are moot, and the claim for compensation is denied.

Date: _____

Made by: _____

MARGARET D. LANDOLT
Administrative Law Judge
Division of Workers' Compensation

