

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

Injury No.: 03-118653

Employee: Norbert Butler  
Employer: Boeing  
Insurer: Indemnity Insurance Company  
c/o Broadspire  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund (Open)  
Date of Accident: November 5, 2003  
Place and County of Accident: St. Louis County

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 August 8, 2006.

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 Kathleen Hart, issued August 8, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 31<sup>st</sup> day of January 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
NOT SITTING

William F. Ringer, Chairman

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

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

Attest:  
  
\_\_\_\_\_

Secretary

## TEMPORARY OR PARTIAL AWARD

Employee: Norbert Butler

Injury No.: 03-118653

Dependents: n/a

Before the  
**Division of Workers'**

Employer: Boeing

**Compensation**

Additional Party: Second Injury Fund (open)

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

Insurer: Indemnity Insurance Company c/o Broadspire

Hearing Date: May 9, 2006

Checked by: KMH/tr

### 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: November 5, 2003
5. State location where accident occurred or occupational disease 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? 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:  
Claimant struck his left thumb and hand on an aircraft while installing a fastener.
12. Did accident or occupational disease cause death? No
13. Parts of body injured by accident or occupational disease: Left thumb and hand
14. Compensation paid to-date for temporary disability: None
15. Value necessary medical aid paid to date by employer/insurer? \$2,742.88
16. Value necessary medical aid not furnished by employer/insurer? -0-

Employee: Norbert Butler

Injury No.: 03-118653

17. Employee's average weekly wages: +\$993.84

18. Weekly compensation rate: \$662.55/\$347.05

19. Method wages computation: Stipulation

### COMPENSATION PAYABLE

20. Amount of compensation payable:

Future medical benefits: \*

Future temporary total disability (or temporary partial disability) \*\*

(all use of an asterisk (\*) denotes an uncertain contingent future benefit)

TOTAL: \*\*\*

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 0% 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: Norbert Butler

Injury No.: 03-118653

Dependents: n/a

Before the  
**Division of Workers'  
Compensation**

Employer: Boeing

Department of Labor and Industrial  
Relations of Missouri

Additional Party: Second Injury Fund (open)

Jefferson City, Missouri

Insurer: Indemnity Insurance Company c/o Broadspire

Checked by: KMH/tr

Two claims were tried together, Injury Numbers 03-118653 and 04-110818. Pursuant to 8 C.S.R. 20-3.050(1)(2) and (3), all claims were tried together in one proceeding and one transcript will be generated but 2 separate awards will be issued. The claims and facts are so inextricably intertwined that resolution of one necessarily involves resolution of the other. The earliest Injury Number, 03-118653, will be designated the master proceeding and the evidence and transcript will reside in that file.

The hearing in these matters was held May 9, 2006. Norbert Butler (Claimant) was represented by attorney Kevin Wayman. Boeing (Employer) and its insurer, Indemnity Insurance Company, were represented by attorney Jay Lory.

The issues in the first claim, 03-118653, were medical causation, future medical care, and future temporary total disability.

The issues in the second claim, 04-110818, were occupational disease, medical causation, future medical care and future temporary total disability.

Claimant's attorney requested no fee on the benefits awarded herein.

### **FINDINGS OF FACT**

Based on the competent and substantial evidence, I find:

1. Claimant is a 47 year-old male who has worked for Employer since 1984 as a sheet metal assembler and riveter building aircraft. He uses a variety of pneumatic tools. All of his tools are assisted by air and he uses no electric tools.
2. On November 5, 2003, Claimant injured his left hand while working on an aircraft. He was using an Allen wrench with one hand and a power-assisted screwgun with his other hand. Claimant was holding what turned out to be a defective fastener with the screwgun when it twisted causing Claimant's left hand to strike the aircraft. Claimant's left palm and base of his left thumb hit the bulkhead of the aircraft causing immediate pain in the base of his thumb and in his hand.
3. Claimant had difficulty gripping and lost strength and pinch. He notified his boss and returned to work.
4. Within a few days Claimant went to the plant doctor, Dr. Heutel. The doctor took x-rays and prescribed physical therapy and medications. During the course of his treatment with Dr. Heutel, Claimant continued to have decreased strength, grip and pinch.
5. In January 2004, Claimant had a similar incident at work, but his hand did not hit the plane. This incident did not cause an increase in his symptoms.
6. In February 2004, Claimant had a nerve conduction study which was negative. Dr. Heutel released Claimant from care, but he continued to have pain in his hand.
7. On May 31, 2004, Claimant injured the distal joint of his left thumb at home while assembling a trampoline. He had surgery to repair his extensor tendon and was restricted to one-handed duty for 4 weeks. This injury did not affect his complaints from his 2003 work injury. The work injury caused complaints at the base of his thumb and the trampoline injury caused pain at the distal joint of his thumb.
8. Due to his continuing complaints at the base of his thumb and in his hand, Claimant returned to plant medical in September 2004. Since his last plant medical visit in February 2004, Claimant's complaints had remained the same. Claimant did not have an accident in September 2004, and Employer and their doctors recorded this treatment as re-opening his 2003 injury.
9. Claimant saw Dr. Brown in September 2004. Dr. Brown found Claimant had tenderness at the base of his thumb and a mildly positive Grind's test which reveals arthritis at the base of the thumb. X-rays at that time showed some osteoarthritis and osteophyte formation at the base of his left thumb. There were also similar

degenerative changes found in x-rays of the right thumb, but Claimant had no complaints at that base of his right thumb at that time. Claimant testified Dr. Brown told him he may have arthritis in the joint, but it is a “gray” area as to whether this is work related or age related. Dr. Brown told Claimant he was young to have arthritis and the injury did not help. Claimant had a steroid injection and was released to work.

10. Claimant has been diagnosed with some arthritis in his left knee due to a prior dislocation. He has also been diagnosed with arthritis in his right hand where the thumb meets the hand. His right hand did not bother him until January 2006 when he had another work injury. He has not been diagnosed with arthritis in any other part of his body.
11. Claimant continues to have pain in his left thumb and palm area. He has difficulty gripping and pinching and uses his right hand to compensate for his difficulties with his left hand.
12. Claimant had a left carpal tunnel release and ganglion excision in 2002. At the time of his release from treatment following that injury, he had no complaints at the base of his left thumb, but he did have some difficulty with grip strength. Claimant had no prior complaints at the base of this left thumb.
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 current complaints and need for additional treatment on his left hand are medically and causally related to his November 5, 2003, injury.**

The medical experts in this case agree Claimant had some osteoarthritis (OA) in his left thumb before this November 2003 injury. I agree with Employer’s expert, Dr. Brown, that Claimant’s OA was not caused by his 2003 injury. However, that is not where the inquiry into medical causation ends. The appellate court has held that “disability sustained by the aggravation of a preexisting nondisabling condition or disease caused by a work-related accident is compensable even though the accident would not have produced the injury in a person not having the condition.” *Kelley v. Banta & Stude Constr. Co.*, 1 S.W.3d 43, 38 (Mo.App. E.D.1999).

Dr. Brown testified OA can be asymptomatic. He testified Claimant had an arthritic joint which became painful after he struck it on the aircraft. His arthritis became symptomatic after his November 2003 accident.

Dr. Schlafly also found Claimant had asymptomatic arthritis prior to his injury. He found the impact from the injury resulted in a substantial aggravation of the OA such that it became painful and requires surgery.

Claimant credibly testified he had no complaints at the base of his left thumb before the November 2003 injury. All of the medical records following this injury to date indicate he has continued to have pain at the base of his thumb. He did have another incident at work in January 2004, but his thumb did not hit the plane. He also testified his complaints at that time were the same as they had been since his November 2003 injury. There is no evidence that Claimant’s home injury to the distal joint of his thumb in May 2004 involved any twisting or bending at the base of his thumb.

Based on the Claimant’s credible testimony and the medical evidence, I find Claimant’s November 2003 injury caused his asymptomatic OA to become symptomatic. His complaints began as a result of this injury and they have not resolved. He is in need of additional treatment and I find this medically and causally related to his November 2003 injury.

Injury No: 03-118653

**2. Claimant is entitled to additional medical care to his left hand as a result of his November 2003 injury.**

Both medical experts agree Claimant is in need of additional treatment. Section 287.140.1 RSMo provides

that in addition to all other compensation, the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, to cure and relieve from the effects of the injury. I find Employer is responsible to provide Claimant with medical treatment. I further find Employer is obligated to provide the following treatment: Employer shall select a competent physician and authorize any treatment recommended by the physician including, but not limited to:

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

If Dr. Brown cannot or will not treat Claimant's left thumb and hand, Employer shall immediately provide another surgeon from a different medical practice group.

### **3. Claimant is entitled to TTD benefits.**

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 on other grounds). Pursuant to this award, Claimant may receive medical intervention for his left hand. Employer is ordered to provide TTD benefits to cover the healing period associated with such treatment, if Claimant is unable to work during that period.

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*