

TEMPORARY AWARD ALLOWING COMPENSATION
(Affirming in Part and Reversing in Part
Award and Decision of Administrative Law Judge)

Injury No.: 04-145390

Employee: Stephen Butler
Employer: St. Peters Cemetery Association, Inc.
Insurer: 1) Federal Insurance Company
2) St. Paul Travelers
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)
Date of Accident: March 1, 2004
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 § 287.480 RSMo. We have reviewed the evidence, read the briefs of the parties, heard oral argument, and considered the whole record. Pursuant to § 286.090 RSMo, the Commission reverses in part and affirms in part the award and decision of the administrative law judge dated June 1, 2006. The award and decision of Administrative Law Judge Joseph E. Denigan, is attached and incorporated by this reference to the extent it is not inconsistent with the findings, conclusions, award, and decision herein.

Preliminaries

The issue stipulated at trial was the contraction of an occupational disease arising out of and in the course of his employment. The controlling statute is § 287.067.1 RSMo.

The administrative law judge determined and concluded that employee did not sustain his burden of proof with regard to the contraction of an occupational disease to either upper extremity arising out of and in the course of his employment.

A timely Application for Review with the Commission was submitted alleging that the award issued by the administrative law judge was erroneous in finding that employee's left carpal tunnel syndrome and right cubital tunnel syndrome were not compensable.

The Commission affirms the determination of the administrative law judge that employee's right cubital tunnel syndrome is not compensable, as it did not arise out of and in the course of his employment.

For the reasons set forth in this award and decision, the Commission reverses the administrative law judge's award with regard to the compensability of the left carpal tunnel syndrome.

Factual Findings

The findings of fact and stipulations of the parties were accurately recounted in the award of the administrative law judge; therefore, the pertinent facts will merely be summarized below.

Employee worked fulltime as a gardener for employer for fifteen years. As such, employee's responsibilities included attending to the church grounds, as well as, the 110 acre main cemetery and the 30 acre Bethany

cemetery. Employee's duties, which varied across seasons, included cleaning out flower beds, cultivating the land with tillers and augers, trimming bushes and trees, spreading mulch, planting, shoveling, digging, and raking. Employee worked forty hours a week, five days a week, forty-nine weeks a year. Employee was allowed two fifteen-minute breaks, in addition to a thirty-minute lunch break.

Employee began experiencing pain, numbness, and tingling in his left hand in the spring of 2004. Employee did not attribute his symptoms to a specific work event, but associated them with various work activities. Employee reported his symptoms to his supervisor; however no report of injury was completed, nor was any medical treatment authorized by employer. Employee continued to perform his regular job duties and began wearing a splint to support his left wrist while he worked.

Expert Opinions

Dr. Schlafly first examined employee on November 7, 2005. Dr. Schlafly performed a physical examination and took a medical history. Upon examination, employee was found to have thenar atrophy and was positive for Tinel's sign, both of which Dr. Schlafly believed were an indication of carpal tunnel syndrome. Dr. Schlafly opined that the symptoms experienced by employee in his left hand and wrist, including numbness and tingling, were due to carpal tunnel syndrome. Dr. Schlafly recommended employee undergo a carpal tunnel release on the left. Dr. Schlafly opined that employee's work was the substantial and prevailing factor in the development of the carpal tunnel syndrome.

Dr. Brown gave two diagnoses with regard to the left upper extremity. Dr. Brown diagnosed employee with SLAC, due to an unrepaired scapholunate tear and carpal tunnel syndrome on the left. He opined that there were two causes for employee's carpal tunnel syndrome. The SLAC was one possible cause; and work as a gardener was another possible cause. The doctor testified that both were significant or substantial factors of his condition, but he was unable to tell which one was the actual cause of the carpal tunnel condition. Dr. Brown recommended employee wear a splint on his left wrist as well as take anti-inflammatory medications for the carpal tunnel syndrome.

Conclusions of Law

Occupational Disease

Section 287.067, RSMo 2000, states as follows:

1. In this chapter the term "occupational disease" is hereby defined to mean, unless a different meaning is clearly indicated by the context, 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.

The employee must prove by substantial and competent evidence that he has contracted an occupational disease and not an ordinary disease of life. *Kelley v. Banta & Stude Const. Co., Inc.*, 1 S.W.3d 43, 48 (Mo.App. E.D. 1999); *Hayes v. Hudson Foods, Inc.*, 818 S.W.2d 296, 299-300 (Mo.App. S.D. 1991). This involves showing that there was an exposure to the disease which was greater than or different from that which affects the public generally, and that there was a recognizable link between the disease and some distinctive feature of the employee's job which is common to all jobs of that sort. *Id.*; *Dawson v. Associated Elec.*, 885 S.W.2d 712, 716 (Mo.App. W.D. 1994). The probability that the claimed occupational disease was caused by conditions in the work place is generally established through medical expert testimony. *Id.*

A claim for benefits is not necessarily defeated by the mere possibility that multiple factors caused or contributed

to the cause of an occupational disease. *Sheehan v. Springfield Seed & Floral, Inc.*, 733 S.W.2d 795, 797-98 (Mo.App. S.D. 1987). Work conditions need not be the sole cause of the occupational disease, so long as they are a major contributing factor to the disease. *Kelley*, 1 S.W.3d at 48. A single expert medical opinion will support a finding of compensability even where the causes of the occupational disease are indeterminate. *Id.*; *Dawson*, 885 S.W.2d at 716.

After careful review, the Commission does not agree with the finding of the administrative law judge that employee's left carpal tunnel syndrome is not compensable. Employee met his burden by establishing that he contracted an occupational disease, carpal tunnel syndrome, and not an ordinary disease of life. He was able to demonstrate both that his exposure was greater than that which affects the public generally and that his work as a gardener was linked to the contraction of the disease. Additionally, through expert testimony, claimant was able to establish that his work conditions were a major contributing factor to the disease.

Employee was able to establish exposure, as both Dr. Schlafly and Dr. Brown testified that employee's work conditions exposed him to the contraction of carpal tunnel syndrome. Employee's testimony as to the repetitive nature of his duties allowed medical experts to conclude that his work exposed him to greater risk than that which affects the public generally. Dr. Schlafly testified that employee's duties exposed him to the contraction of an occupational disease, specifically carpal tunnel syndrome. Dr. Brown corroborated Dr. Schlafly's testimony by opining that employee's work conditions exposed him to the contraction of the disease.

Employee was also able to establish a link between the work conditions and the disease through competent expert testimony. Dr. Schlafly testified that after reviewing both employee's medical history and records and performing a complete physical examination, that employee's work for employer was a substantial factor in employee's development of left carpal tunnel syndrome.

Furthermore, Dr. Brown conceded that there was a link between employee's work conditions and the disease. On cross-examination, Dr. Brown opined that employee's work as a gardener was a substantial factor in the development of employee's carpal tunnel syndrome.

Employee satisfied his burden through expert testimony provided by Dr. Schlafly and Dr. Brown establishing work place exposure as well as a link between employee's left carpal tunnel syndrome and his employment. The testimony offered by employee as well as medical experts was sufficient in convincing the Commission that his employment was a substantial factor resulting in his left carpal tunnel syndrome. Therefore, the Commission finds that there was exposure in the workplace sufficient to conclude that his alleged repetitive motion was capable of producing his resultant medical condition, left carpal tunnel syndrome.

Temporary Total Disability and Future Medical Benefits

In cases involving the award of future medical benefits, the medical care must flow from the accident before the employer is to be held responsible. *Landers v. Chrysler Corp.*, 963 S.W.2d 275, 283 (Mo.App. E.D. 1997). Both Dr. Schlafly and Dr. Brown opined that medical treatment was necessary with regard to employee's carpal tunnel syndrome. Therefore, the Commission finds that employee is entitled to, and employer/insurer shall provide, such future medical benefits as may be determined to be necessary to cure and relieve employee's carpal tunnel syndrome. In addition, employee is entitled to temporary total disability benefits to cover healing periods to be paid prior to the time when the employee can return to work, his condition stabilizes, or his condition has reached a point of maximum medical progress. *Schuster v. Division of Employment Security*, 972 S.W.2d 377, 381 (Mo.App. E.D. 1998).

Conclusion

Based on the foregoing, the Commission concludes and determines that employee did sustain an occupational disease arising out of and in the course of his employment and reverses the portion of the award of the administrative law judge concluding that employee's left carpal tunnel syndrome is not compensable. The portion of the award of the administrative law judge concluding that employee's right cubital tunnel syndrome is not compensable is affirmed.

We find that employee is entitled to future medical benefits as may be determined necessary to cure and relieve employee's work-related condition; as well as temporary total disability to cover healing periods associated with such treatment.

The case is remanded to the Division of Workers' Compensation with the employer being responsible to provide workers' compensation benefits as appropriate pursuant to the provisions of the Workers' Compensation Act due to this compensable accident.

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.

Given at Jefferson City, State of Missouri, this 9th day of February 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

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Secretary

AWARD

Employee: Stephen Butler

Injury No.: 04-145390

Dependents: N/A

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

Employer: St. Peters Cemetery Assoc., Inc.

Additional Party:

Insurer: Federal Insurance Company
St. Paul Travelers

Hearing Date:

March 13, 2006 Checked by: JED: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? No
4. Date of accident or onset of occupational disease: N/A
5. State location where accident occurred or occupational disease was contracted: N/A

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? 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: N/A
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: N/A
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by Employer? -0-

Employee: Stephen Butler

Injury No.:

04-145390

17. Value necessary medical aid not furnished by Employer? N/A
18. Employee's average weekly wages: \$805.20
19. Weekly compensation rate: \$536.79/\$347.05
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 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 Claimant:

N/A

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Stephen Butler

Injury No.: 04-145390

Dependents: N/A

Employer: St. Peters Cemetery Assoc., Inc.

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

Additional Party: Second Injury Fund

Insurer: Federal Insurance Company
St. Paul Travelers

Checked by: JED:tr

This case involves a disputed injury resulting to Claimant with the reported accident date of March 1, 2004. Employer admits Claimant was employed on said date and that any liability was fully self-insured. Both parties are represented by counsel. This matter proceeds pursuant to Hardship Petition. Employer paid no benefits to date. The single issue for trial is the incidence of occupational disease including exposure and medical causation.

FINDINGS OF FACT

In March 2004, claimant Stephen Butler worked as a gardener for approximately fifteen years. At trial, Claimant provided a detailed list of his job duties which included cleaning out flower beds, cultivating the ground with tillers and augers, trimming trees and hedges, shoveling, digging, raking, mulching, and planting. Claimant described his job as very seasonal in nature. Claimant testified, in detail, as to which duties took place during which season. Claimant explained that he did not attribute this injury to a specific event, but rather to his overall work at St. Peter's Cemetery.

Claimant admitted on cross-examination that he did not do all of the above activities each day and that within each day he would complete an array of jobs. He testified that he would drive across the 110-acre or 30 acre cemetery to the greenhouses for supplies during each day. He was also given two fifteen-minute breaks, and a thirty-minute lunch. Claimant testified that there was clean up at the end of each day.

On direct examination Claimant admitted to having a prior work-related accident in 1993, in which he sustained a fracture dislocation of his right elbow, that he was treated for and released back to work. He testified to having a loss in range of motion in the right elbow and pain upon full flexion of that elbow. He stated he was treated by Dr. Mark Belew. Additionally, he admitted to having numbness and tingling in the right hand and other problems with the right upper extremity several months after the initial event in 1993. In September of 1994, Claimant settled that case for twenty-seven and one-half percent PPD of the right elbow. (Exhibit 2).

While on direct examination Claimant testified he has never sustained any injury to his left wrist, yet both Dr. Schlafly and Dr. Brown took x-rays of his left wrist and both physicians are in agreement, in that, Claimant's x-ray records indicate some sort of prior traumatic event to the left wrist. Specifically, the x-rays show an untreated prior schapholunte ligament tear.

Dr. Schlafly

At the direction of his attorney, claimant testified that he was seen by Dr. Bruce Schlafly, in November of 2005. Dr. Schlafly did a physical examination. Dr. Schlafly reviewed a single record from Dr. Fred Duhart dated 6/6/2005, and the medical records from the prior fracture dislocation of the right elbow. With regard to his job duties, Dr. Schlafly testified that Claimant "takes care of the flowers and trees. He trims trees and plants flowers. He digs in the dirt. Claimant reports that his work there requires a lot of repetitive use of his hands and arms. He uses tools such as tillers and augers. He also uses motorized trimmers for the hedges." (Exhibit D, 8).

Specifically referencing the physical examination of the right upper extremity, Dr. Schlafly testified to obvious atrophy of the muscles in the right hand that are supplied by the ulnar nerve, but no atrophy of the muscles that are supplied by the median nerve. (Exhibit D, 10-11) He performed range of motion testing on the both elbows, which showed considerable stiffness in the right elbow, range of motion being 40 to 115 degrees and some sensory loss in the right hand typical of ulnar nerve problems. (Exhibit D, 10-12).

Based on these findings, Dr. Schlafly provided a diagnosis of severe right cubital tunnel syndrome and painful post-traumatic stiffness at the right elbow. (Exhibit D, 14) He stated that the arthritis and stiffness in the right elbow was due to the prior fracture dislocation, but continued by stating it was his opinion, within a reasonable degree of medical certainty, that his labor work at the cemetery was the substantial and prevailing factor in the cause of the right cubital tunnel syndrome and further recommended surgery for right ulnar nerve transposition. (Exhibit D, 14-15)

In reference to the left wrist, Dr. Schlafly's physical examination revealed muscle atrophy in the thenar muscles supplied by the median nerve. (Exhibit D, 11) Range of motion testing showed bony swelling and tenderness at the left wrist and a positive Tinel's sign. (Exhibit D, 11-12) X-rays of the left wrist showed widening of the scapholunte joint and advanced arthritic changes in the left wrist. (Exhibit D, 13). Based on these findings, Dr. Schlafly provided a diagnosis of left carpal tunnel syndrome and post-traumatic arthritis at the left wrist. (Exhibit D, 14) He testified it was his medical opinion, within a reasonable degree of medical certainty, that Claimant's labor work at the cemetery was the substantial and prevailing factor of the left carpal tunnel syndrome and recommended surgery for left carpal tunnel release and surgery for fusion of the left wrist. (Exhibit D, 14-15). Dr. Schlafly admitted the x-rays reviewed are consistent as to suggest an old ligament injury to the left wrist which probably had been aggravated to a great extent by his work at the cemetery. (Exhibit D, 15).

On cross examination, Dr. Schlafly admitted to performing approximately a dozen Worker's Compensation evaluations per week and over 90% of those evaluations are for Claimants. (Exhibit D, 17). Dr. Schlafly admitted on cross-examination that he did not know if Claimant's job duties changed throughout the year. (Exhibit D, 21) Dr. Schlafly is unaware of the hours Claimant works on a daily basis, how many breaks he takes a day, how long he is allowed for lunch, if he has any additional employment, or if he has any outside hobbies or activities in which he participates. (Exhibit D, 21-22).

Dr. Schlafly also testified on cross-examination that Claimant's loss of range in motion to the left wrist was

in part due to the prior injury to the left scapholunate ligament. (Exhibit D, 30) Dr. Schlafly had a brief and limited conversation about his job duties, took x-rays of the left wrist only, and performed a physical examination of Claimant. He did not recommend EMG or nerve conduction studies to the left or right arm. (Exhibit D, 33). Additionally, Dr. Schlafly admitted it is possible that post-traumatic arthritic changes can cause compression of nerves in the surrounding areas. (Exhibit D, 18)

Dr. Brown

Claimant was also evaluated by Dr. Brown, who took an extensive personal, work, medical and social history. The work history detailed Claimant's job duties, specifically as to each season of the year and what tools he uses for those duties. Dr. Brown performed a physical examination on Claimant and noted he had significant loss of motion, specifically 5 degrees of flexion and 30 degrees of extension of the right upper extremity, which was caused by the post-traumatic arthritic changes in the right elbow related to his previous fracture dislocation. He noted visible muscle wasting of the first dorsal interosseous muscle and a positive Fremont's sign, positive Tinel's sign over the right elbow and terminal extension, which is consistent with arthritis. Dr. Brown also noted sensory deficit and loss of sensation in the little finger and ulnar half of the ring finger. Dr. Brown took three x-rays of both the left and right elbows for comparison, specifically posterior anterior, lateral and oblique views, which he considers standard and necessary to provide multiple angles to view the area. Dr. Brown testified, based on his review of the x-rays of the elbows, that there were significant arthritic changes at the right elbow and not the left.

He then testified that there were two diagnoses. First was severe post-traumatic arthritis at the right elbow. Because of the severity of the prior accident and since the arthritis was solely in the right elbow and not the left, Dr. Brown concluded that the prior fracture dislocation was the cause for the post-traumatic arthritis. (Exhibit 1, 17-19). The second diagnosis was severe ulnar neuropathy, most likely at the cubital tunnel at the right elbow. Dr. Brown testified the substantial cause of the ulnar neuropathy was the post-traumatic arthritis to the right elbow, which was related to the prior fracture dislocation. (Exhibit 1, 17-19).

Additionally, Dr. Brown explained that the prior fracture dislocation causes heterotopic bone formations, which is a new bone formation that can encroach upon the space of the cubital tunnel and increase the pressure on that nerve. Dr. Brown testified that he would recommend nerve conduction studies to help objectively stage the severity of the injury to the nerve and to rule out any other possible nerve problems in the extremity. (Exhibit 1, 21-22). Dr. Brown testified that it is likely that Claimant is going to need surgery at the ulnar nerve of the right elbow and treatment for the post-traumatic arthritis of the elbow. Dr. Brown also testified that this treatment and care is not substantially related to the work duties he performs for St. Peters Cemetery. (Exhibit 1, 22).

Dr. Brown also performed a physical examination on the left wrist and noted, decreased active range of motion, in that he could only bend it backwards about 45 degrees. (Exhibit 1, 10). Dr. Brown also testified to tenderness over the radial carpal joint on the left and a positive Tinel's sign over the left carpal tunnel. (Exhibit 1, 12-13). Dr. Brown was able to perform a Phalen's test, which was negative bilaterally. (Exhibit 1, 13). Dr. Brown testified that he took posterior anterior, lateral and oblique x-rays of both wrists for comparison. (Exhibit 1, 14). Those x-rays revealed a widening between the left scaphoid bone and the lunate bone in the wrist with associated severe arthritic changes, which is termed a SLAC wrist, which is caused by a untreated or unrepaired scapholunate ligament tear in the past. Additionally, it was Dr. Brown's testimony that a scapholunate ligament is not torn from repetitive motion; they are torn from traumatic injury. Claimant did not mention any prior injuries to his left wrist.

Within a reasonable degree of medical certainty, Dr. Brown's provided two diagnosis on the left side. (Exhibit 1, 22-23). First was SLAC wrist, which results in wrist inflammation and arthritic changes and in turn, the narrowing of the carpal tunnel and pressure on the median nerve. (Exhibit 1, 23-24). Based on this diagnosis of SLAC wrist, Dr. Brown believes that if Claimant continues to be symptomatic, that he would consider possible surgical repair, but that any treatment for this condition is wholly unrelated to any job performed by Claimant at St. Peter's Cemetery. (Exhibit 1, 24).

Dr. Brown's second diagnosis is carpal tunnel syndrome. Dr. Brown testified to two possible causes for the left carpal tunnel syndrome. One was the SLAC wrist, which again results in wrist inflammation and arthritic changes, narrowing of the carpal tunnel, and pressure on the median nerve, which can cause carpal tunnel syndrome. (Exhibit 1, 23-24). The other possible cause is his work as a gardener at St. Peter's Cemetery. Dr. Brown testified, that he is unable to provide, within a reasonable degree of medical certainty, which one of these causes would be the exact cause of Claimant's left carpal tunnel. (Exhibit 1, 25).

On cross-examination, Dr. Brown continues to state that he is unable to provide what is the substantial factor that caused Claimant's left carpal tunnel. (Exhibit 1, 42). He did testify that Claimant's work is a significant risk factor for carpal tunnel, but when considering all the medical evidence, Dr. Brown explained he is unable to specify which diagnosis caused the left carpal tunnel syndrome. (Exhibit 1, 25). During cross-examination, Dr. Brown does state that both the SLAC wrist and his work were substantial factors in the causing the carpal tunnel syndrome, but if his testimony is looked at in its totality it is clear that Dr. Brown's opinion is that he is unable to tell what actually caused Claimant's carpal tunnel syndrome.

RULINGS OF LAW

Incidence of Occupational Disease: Exposure and Medical Causation

A claimant must prove all the essential elements of the case. Fischer v. Archdiocese of St. Louis, 793 S.W.2d 195, 198 (Mo.App. 1990). Dolen v. Bandera's Cafe, 800 S.W.2d 163, 164 (Mo.App. 1990). A claimant must prove "a direct causal connection between the conditions under which the work is performed and the occupational disease." Sellers v. Trans World Airlines, Inc., 752 S.W.2d 413, 415 (Mo.App. 1988). A claimant must identify a hazard of occupational disease to which he was exposed on his job. Section 287.063.1 RSMo (1996). A two pronged test remains the law: (1) proof of an exposure greater than that which affects the public generally and (2) proof of a recognizable link between symptoms of the condition or disease and a distinctive feature of the job. Lytle v. T-Mac, 931 S.W.2d 496 (Mo.App. 1996). Kelley v. Banta & Stude Const. Co., Inc., 1 S.W.3d 43, 48 (Mo.App. 1999).

Medical causation, which is not within the common knowledge or experience of lay understanding, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause. McGrath v. Satellite Sprinkler's Sys., 877 S.W.2d 704, 708 (Mo. App. 1994).

In all events, and with all proofs in *complex medical evidence*, a medical expert's opinion must be supported by facts and reasons proven by competent evidence that will give the opinion sufficient probative force to be substantial evidence. Silman v. Wm. Montgomery & Assoc., 891 S.W.2d 173, 176 (Mo.App. 1995), *citing* Pippin v. St. Joe Mineral Corp., 799 S.W.2d 898, 904 (Mo.App. 1990). Any weakness in the underpinnings of an expert opinion goes to the weight and value thereof. Hall v. Brady Investments, Inc., 684 S.W.2d 379 (Mo.App. 1984).

Right Upper extremity

Claimant contends that his work as a gardener at St. Peter's Cemetery is the cause of the problems he is having with his right upper extremity (right elbow and hand). As with the left upper extremity, Employer does not dispute Claimant may have problems with his right upper extremity but Employer does dispute that Claimant's work as a gardener at the Cemetery is the substantial cause thereof.

Claimant relies on the testimony of Dr. Bruce Schlafly, to establish causation, however, the testimony of Dr. Schlafly is lacking in credibility. As previously mentioned, Dr. Schlafly took a very minimal and incomplete history of the job duties at St. Peter's Cemetery. No other ergonomic investigation was referenced. Had Claimant not testified that his duties were various, and seasonal, but clearly repetitive, this omission would not be so revealing. It is reasonable to expect an expert to be fully informed about pre-existing disabilities. Plaster v. Dayco Corp., 760

S.W.2d 911 (Mo.App. 1988). It also seems reasonable that an expert in occupational diseases be fully informed about a patient's activities and exposures both inside and outside the workplace. With little foundation, Dr. Schlafly asserts that Claimant's job duties at the Cemetery are the substantial and prevailing factor and the cause of claimant's right cubital tunnel syndrome. (Exhibit D, 15).

On re-direct examination, Dr. Schlafly was presented with a hypothetical which assumes the following: that Claimant works a forty hour week, he has been a gardener for 15 years, that the work he performs is seasonal but requires the use of his upper extremities, that he is allowed two 15 minute breaks and a 30 minute lunch per day. Based solely on these facts, Dr. Schlafly testified that within a reasonable degree of medical certainty it is his opinion, based on the above hypothetical, that Claimant's right cubital tunnel syndrome was work-related and his work activities were the substantial and prevailing factor in the development. (Exhibit D, 42-46). Additionally, Dr. Schlafly provides an opinion that the left carpal tunnel syndrome is work-related and that the prevailing factor for the development of the carpal tunnel syndrome was his work related conditions. However, only on re-direct examination was the hypothetical clarified. As such, it seems clear that Dr. Schlafly was going to come to the opinion that Claimant's complaints and problems were related to his work, regardless the information provided or the lack thereof. In addition, Dr. Schlafly admits that generally ergonomics and job rotation are recommended as a strategy to try to reduce repetitive motion injury. (Exhibit D, 36). Unfortunately, Dr. Schlafly did not ask Claimant enough about his job duties, and therefore limited his ability to remark on whether Claimant's position is one in which he gets a strong variety of jobs and rotation from those types of job duties that could cause repetitive trauma-type injuries.

Dr. David Brown's testimony is the more credible. Dr. Brown is a hand surgeon, who is board certified in plastic and reconstructive surgery with added certification in the sub-specialty of hand surgery. Dr. Brown took a very thorough job description from Claimant, specifically detailing what Claimant's job responsibilities are in each season and the tools he uses. Dr. Brown completed a thorough physical examination of Claimant, including range of motion testing and three separate x-rays of each elbow. (Exhibit 1, 14). Those x-rays showed severe arthritic changes in the right elbow when compared to the left. (Exhibit 1, 17).

Dr. Brown provided two diagnoses as to the right elbow. First, Claimant has severe post-traumatic arthritis at the right elbow. Second, he has severe ulnar neuropathy of the right upper extremity, likely at the level of the cubital tunnel. (Exhibit 1, 17-18). Dr. Brown described in detail how arthritis causes narrowing of the joint. Based on the prior medical records on the right elbow, specifically those of Dr. Belew, a treating physician, and the x-rays taken on September 22, 1993 and October 20, 1993, Dr. Brown specifically points out that heterotopic bone formations in the right elbow were noted. (Exhibit 1, Exhibit B). Dr. Brown testified in detail how these heterotopic bone formations, which are new bone formations, can actually encroach upon the cubital tunnel and put increased pressure and compression on the ulnar nerve at the elbow. (Exhibit 1, 19). Dr. Brown came to an opinion, within a reasonable degree of medical certainty, that the severe post-traumatic arthritis was related to the previous fracture dislocation of the right elbow. (Exhibit 1, 18). Given Claimant's prior history and the lack of similar findings of arthritis on the left side, Dr. Brown does not believe the right ulnar neuropathy is associated with his work duties at Saint Peter's Cemetery. (Exhibit 1, 18).

Dr. Schlafly's opinion as to medical causation of the right ulnar neuropathy is flawed for several reasons. Dr. Schlafly did not request x-rays on the either elbow, specifically the right. He admitted that there are heterotopic bone formations present in Claimant's right elbow and even diagnosed Claimant with severe post-traumatic arthritis in the right elbow (Exhibit 1, 9). He admitted that this arthritis pre-existed the alleged date of injury and that those arthritic changes in the elbow could possibly cause compression of nerves in the surrounding areas. (Exhibit 1, 18, 20). Admission of a contrary matter weakens the value of expert opinion. DeLisle v. Cape Mutual Insurance, 675 S.W.2d 97 (Mo.App. 1984).

Despite these deficiencies, Dr. Schlafly purports to provide an opinion based on "a reasonable degree of medical certainty" that the right cubital tunnel was caused by work at the Cemetery.

Dr. Brown's opinions were better founded. Dr. Brown took an extensive personal, social, medical and job history and completed a thorough medical examination. Claimant has no signs of ulnar neuropathy in his dominant, left side. Dr. Brown reviewed the prior medical records that indicated the existence of heterotopic bone

formations back in 1993 and 1994. He took x-rays of both elbows. After considering Claimant's individual past and objectively reviewing the medical records, Dr. Brown concluded that Claimant's prior fracture dislocation is the substantial cause of his right ulnar neuropathy. This testimony is more persuasive than Dr. Schlafly's.

Left Wrist

The Employer does not dispute that Claimant may have problems with his left wrist and hand. Rather, Employer disputes that Claimant's work as a gardener at the Cemetery is the substantial cause of those problems.

Dr. Schlafly's examination noted a loss of range in motion and a positive Tinel's sign over the median nerve of the left wrist. He took x-rays of Claimant's left wrist. He reviewed those x-rays and observed in his report that the x-ray findings are consistent with post-traumatic arthritis of the left wrist following a scapholunate ligament injury. (Exhibit D, 28). Dr. Schlafly admitted that Claimant's left wrist injury was caused by the prior unrepaired scapholunate ligament tear. In addition, Dr. Schlafly admitted that post-traumatic arthritic changes could cause compression of nerves in surrounding areas. (Exhibit D, 18). He did not perform, nor recommend EMG or nerve conduction studies to pinpoint the cause of Claimant's problems. Nevertheless, despite serious pre-existing pathology and ongoing degenerative change, and with minimal current work-up, Dr. Schlafly testifies that the cause of Claimant's carpal tunnel syndrome is his work at the Cemetery.

Dr. Schlafly's testified that the primary basis for his diagnosis of left carpal tunnel syndrome is the Tinel's sign, the history provided by Claimant, loss of normal pinwheel sensation and thenar atrophy in the left hand (Exhibit D, 29). Even without a conservative treatment program, no EMG or nerve conduction studies to rule out other possible causes, Dr. Schlafly recommends surgery. (Exhibit D, 33).

Dr. Brown also had the opportunity to review the left wrist. Dr. Brown noted that in the spring of 2004, he noted pain in his left thumb, index and middle fingers, along with decreased strength and grip. He completed several range of motion tests, which showed decreased range of motion in the left wrist. A Tinel's test on the left wrist was positive. Additionally, Dr. Brown performed a Phalen's test, which was negative bilaterally and grip strength tests, which he were reasonable on both sides. He had the standard posterior anterior, lateral and oblique x-rays taken of both wrists, for comparison. The x-rays of the left wrist revealed widening of the scaphoid bone and lunate bone in the wrist, associated with severe arthritic changes. This pattern of widening is known as a SLAC wrist, which stands for "scapholunate advanced wrist collapse", which can be caused by an untreated or unrepaired scapholunate ligament tear in the past.

Dr. Brown identified two diagnoses on the left wrist: carpal tunnel syndrome or SLAC wrist. With regard to causation of the reported carpal tunnel syndrome, Dr. Brown testifies to two possibilities. First was the SLAC wrist, which results in inflammation and arthritic changes within the carpal tunnel which then narrows the space within the carpal tunnel and puts pressure on the median nerve. (Exhibit 1, page 24-25). Dr. Brown also testified that it was possible that Claimant's work, as a gardener could be a cause of the left carpal tunnel syndrome.

As suggested diagnostic work-up Dr. Brown recommended EMG or nerve conduction studies to objectively determine the severity of the left carpal tunnel syndrome and rule out other diagnoses. Dr. Brown testified that if the EMG results indicated *mild* compression, he would recommend a conservative course of treatment and, perhaps, surgical treatment. If the results noted *significant* compression neuropathy with chronic changes, then he would recommend surgery. (Exhibit 1, 25-26). The second diagnosis for the left wrist is a scapholunate arthritic changes, or SLAC wrist, which again, is likely due to an unrepaired scapholunate tear and that opinion is provided within a reasonable degree of medical certainty. Dr. Brown also testifies that scapholunate ligament injuries do not occur from repetitive trauma type activities but, rather, from [acute] traumatic injury. (Exhibit 1, page 15-16).

On cross-examination, Dr. Brown states that both the SLAC wrist and the work conditions are significant factors but that he cannot tell which caused the carpal tunnel. He does not testify on direct examination that both are concurrent causes. It is only after the Doctor is asked if the words significant and substantial are synonymous, does he equivocate and state that either the SLAC wrist or his work as a gardener is a substantial factor for the left

carpal tunnel. (Exhibit 1, 42-44). After diligent cross-examination, Dr. Brown seems to equivocate somewhat, or merely misspeaks, acknowledging that both the SLAC and work conditions are “substantial factors” to the carpal tunnel. (Exhibit 1, 44). Looking at his direct testimony and the totality of Dr. Brown’s testimony, and his report, it is reasonable to conclude Dr. Brown was unable to determine the true cause of Claimant’s injuries. He states that both are potential causes, but he is unable to provide an opinion, within a reasonable degree of medical certainty, which was the likely actual cause of the left carpal tunnel syndrome. (Exhibit 1, 25).

Separately, there is medical evidence that suggests prior single-trauma injury to the left wrist, which Claimant is unable to recall. Notably, Claimant was asked about several scars he had on his hand and again he was unable to recall the circumstances surrounding those injuries.

In another direction, Dr. Schlafly testified on cross examination that Claimant’s current complaints and alleged injury have probably been *aggravated* to a great extent by Claimant’s work at the cemetery. (Exhibit D, 40). This type of unexplained shift in analysis undercuts the credibility of his testimony generally.

Dr. Brown provided an additional diagnosis on the left wrist, which was the SLAC wrist, which is caused by an unrepaired scapholunate ligament tear. Dr. Brown clearly testifies, within a reasonable degree of medical certainty, that Claimant’s employment was not the cause of the SLAC wrist. Dr. Brown testifies that if Claimant continues to be symptomatic, he would consider possible surgical repair, but again stresses that he does not attribute this injury or related treatment to his job duties at the Cemetery. (Exhibit 1, 23).

* * *

The deficiencies in Dr. Schlafly’s opinions cause the opinions to be less persuasive than those of Dr. Brown. As such, Dr. Schlafly’s opinions are more like assertions that have little utility since he did not explain how these varied activities nevertheless cause the diagnosed conditions and he did not reconcile serious pre-existing pathologies (on each extremity) with his conclusions. Claimant has an obligation to prove his case by methods relied upon by experts in the field. State Board of Registration for the Healing Arts v. McDonagh, 123 S.W.3d 146 (Mo.banc 2003). This presents a situation of a rather reasonable standard of proof that is not within reach because of the expert’s choice not to reconcile pre-existing medical facts with current complaints and the inexplicable recommendation for surgery without diagnostics or conservative treatments beforehand.

The medical evidence compels a finding that that the right upper extremity injuries complained of in relation to the area not related to Claimant’s employment, but rather related to the arthritis from his prior fracture dislocation, and subsequent severe arthritic changes, of his right elbow. It is undisputed in the record that Claimant sustained severe permanent partial disability of nearly one-third of this elbow in 1993.

In addition, when reviewing all the medical evidence available and the testimony of both medical experts, there is agreement that Claimant sustained some form of previous injury to his left wrist, and inferentially, significant pre-existing permanent partial disability of the left hand. Dr. Brown testified that condition disclosed by x-ray had to be related to a single traumatic event, i.e. a tear. As such, any problems or complaints relating to Claimants SLAC wrist should not be found to be related to the Claim filed by Claimant dated March 1, 2004. As such, Employer is not responsible for any care or treatment relating to those symptoms and complaints.

Finally, based on Dr. Brown’s testimony, the cause of the left carpal tunnel syndrome was undetermined. Dr. Brown identified two pathologies and three possible outcomes. “I think it could be one or the other or a combination of the two.” (Exhibit 1, 44) This is not a proof of causation and is different from the rule that expert medical opinion must establish work conditions as the probable cause but that working conditions need not be the sole cause. Prater v. Thorngate, Ltd., 761 S.W.2d 226 (Mo.App. 1988). Dr. Brown’s testimony permits the possibility that only the pre-existing SLAC condition is responsible for Claimant’s reported injury. The SLAC wrist is a non-compensable cause and he believes it may be the cause of Claimant’s complaints.

With respect to both upper extremities, Claimant’s symptoms are easily traced to prior injuries and/or

settlements. Claimant failed to establish by a preponderance of credible evidence that any permanent disability was the result of the subject accident and not that of a non-compensable, or prior event. Plaster v. Dayco, 760 S.W.2d 911, 913 (Mo.App. 1988). Bersett v. National Super Markets, Inc., 808 S.W.2d 34, 36 (Mo.App. 1991). This is not sufficient basis upon which to predicate liability against Employer.

It is not Employer's expert's responsibility to define the cause of Claimant's condition; not all medical questions are subject to resolution. Sufficiency of evidence is not always attainable. Here, Claimant has two very serious pre-existing pathologies on either extremity and his ergonomic exposure is both varied and seasonal which makes difficult proof of a sufficient ergonomic cause.

Conclusion

Accordingly, on the basis of the substantial competent evidence contained within the whole record, Claimant is found to have failed to sustain his burden of proof. Claim denied.

Date: _____

Made by: _____

Joseph E. Denigan
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secret
Director
Division of Workers' Compensation

Employee: Stephen Butler

Injury No.: 04-145390