

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

Injury No.: 06-121942

Employee: Joseph H. Butler

Employer: Faultless Linen

Insurer: Hartford Underwriter's Insurance c/o Gallagher Bassett

Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

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 Law. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated January 29, 2010, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Cornelius T. Lane, issued January 29, 2010, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 19th day of August 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest

Secretary

AWARD

Employee: Joseph H. Butler

Injury No.: 06-121942

Dependents: N/A

Employer: Faultless Linen

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

Additional Party: Second Injury Fund

Insurer: St. Paul Travelers

Hearing Date: December, 2009 and

Checked by: CTL:ms

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: Alleged September 19, 2006.
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? 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: Claimant alleges injury to his right and left upper extremities due to repetitive lifting at work
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: Alleged right and left upper extremities
14. Nature and extent of any permanent disability: None
15. Compensation paid to-date for temporary disability: none
16. Value necessary medical aid paid to date by employer/insurer? Unknown

Employee: Joseph H. Butler

Injury No.: 06-121942

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: Unknown
- 19. Weekly compensation rate: \$398.66/365.08
- 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 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 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:	Joseph H. Butler	Injury No.:	06-121942
Dependents:	N/A	Before the	
Employer:	Faultless Linen	Division of Workers'	
Additional Party:	Second Injury Fund	Compensation	
		Department of Labor and Industrial	
		Relations of Missouri	
		Jefferson City, Missouri	
Insurer:	Hartford Underwriter's Insurance c/o Gallagher Bassett	Checked by:	CTL: ms

PREFACE

A hearing was held in the above mentioned matter on December 2, 2009. The Claimant, Joseph Butler, was represented by attorney Stephen Thurmer. The Employer/Insurer was represented by attorney Robert Evans. The Second Injury Fund was represented by December 17, 2009.

STIPULATIONS

The parties stipulated to the following:

1. That the Employer/Insurer benefits.

ISSUES

1. Whether the Missouri Division of Workers' Compensation has jurisdiction ,
2. Whether Employer/Insurer is liable for past medical expenses related to the Claimant's claim of occupational injury of September 19, 2006,
3. The average weekly wage and applicable rate,
4. Whether Claimant is entitled to permanent partial disability,
- 5.

EXHIBITS

The Claimant offered the following exhibits into evidence:

- Exhibit A: Report of Dr. Bruce Schlafly.
- Exhibit B: Certified records of Dr. Manish R. Bagwe, M.D.
- Exhibit C: Certified records from Andrez J. Wasiak, M.D.
- Exhibit D: Medical bills.

The Employer/Insurer offered the following exhibits which were entered into evidence without objection:

- Exhibit 1. Medical report of Dr. Cynthia Byler.
- Exhibit 2. Driver's application for Employment of Joseph Butler dated July 2006.
- Exhibit 3. Deposition of Joseph Butler taken October 15, 2007.

FINDINGS OF FACT

1. Claimant, testified at the time of the hearing Texas. Claimant completed eleven grades of education and then later received a GED.
2. Claimant testified that his normal day of delivering and picking up the linen for the Employer would be approximately eleven to twelve hours per day, and half of that time he would spend loading the linens into the linen bag and placing them into hamper.
3. Claimant testified that after being with the Employer four to six weeks he began noticing some numbness in his hands and on September 19, 2006, he went to see a Dr. Wasiak because his hands were sore.
4. Claimant testified at one point while working for the Employer and before going to see the doctor on September 19, 2006, that while working with a hamper his hand got stuck between the hamper and a wall and he did not realize his hand was stuck due to lack of sensation and he had to pull his hand free.
5. Claimant testified that he told his supervisor, Dale Pittman, about the incident of his hand getting stuck between a hamper and a wall. His supervisor did not recommend any medical treatment.
6. Dr. Wasiak on September 19, 2006, saw the Claimant and sent him for an EMG and nerve conduction study which showed Claimant having positive and showing bi-lateral carpal tunnel syndrome. Dr. Bagwe reviewed the image, EMG, and showed bi-lateral carpal tunnel syndrome as well as compression of the nerve on the right and left sides. Claimant contacted his supervisor about the nerve conduction studies and the Employer made an appointment for him to be seen at Concentra, the medical center, on October 6, 2006. Claimant when seen at Concentra was seen by Dr. Puricelli who in the records indicates that Claimant's bi-lateral carpal tunnel problems were not work related.
7. Claimant having been seen by Dr. Bagwe in October of 2006 told the doctor according to the medical records that he had a two year history of complaints about his hands and his complaints became more severe after going to work for the Employer in July of 2006.
8. Dr. Bagwe performed a right carpal tunnel release and a right cubital tunnel release at the right elbow on October 13, 2006. On September 26, 2007, Dr. Bagwe performed left carpal tunnel release and left ulnar nerve transposition on Claimant.

9. The parties stipulated that the Claimant was unable to work between October 13, 2006, through November 6, 2006. This represents 3 6/7 weeks after having right carpal tunnel release and right cubital tunnel release of the right elbow.
10. The parties stipulated that the Claimant missed work from September 26, 2007, through November 24, 2007, representing four weeks of lost time for the operation on his left arm.
11. The Claimant presented as its expert the testimony of Dr. Schlafly, and the Employer/Insurer offered the evidence of its expert Dr. Byler. Both doctors evidence concerned the cause of connection between the Claimant's employment and cause of his problems with his left and right arms.
12. The issue to be determined by the court is whether or not Claimant's employment by the Employer was the prevailing factor in the Claimant's bi-lateral carpal tunnel problems.
13. I find the opinion of Dr. Byler to be most credible in that she examined the medical records, interviewed the Claimant with regard to his occupational exposure at his Employer's place of business, and her conclusion that Claimant's occupational exposure was not the cause of his carpal or cubital tunnel syndrome problems, and that his occupational exposure was not the prevailing factor for Claimant's medical condition and resulting disability. The doctor also was unable to find a prevailing factor, but Claimant's obesity may have been related to his problems. Dr. Byler's background was that she specialized in industrial and occupational medicine, and held various positions. She worked as plant physicians, medical director, chief physician, Director of Industrial Medicine at clinics throughout Illinois and Missouri. The doctor was called upon to deal directly with the issue of whether employees' health and the fact of occupational exposures were work related. I find that her evidence was very credible.

RULINGS OF LAW

1. Claimant failed to carry the burden of proof that his injures were the result of his employment at the Employer's place of business.
2. Claimant is not awarded any temporary total disabilities.
3. Claimant is not entitled to receive back medical expenses.

Date: _____

Made by: _____

Cornelius T. Lane
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Division of Workers' Compensation