

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

Injury No.: 07-036344

Employee: Mary Compton, deceased
Substitute Claimant: Kevin Compton, spouse
Employer: Briggs & Stratton Corporation
Insurer: Self-Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having read the briefs, reviewed the evidence, and considered the whole record, we find that the award of the administrative law judge denying compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge with this supplemental opinion.

Discussion

Statute of limitations

Section 287.430 RSMo provides, in relevant part, as follows:

Except for a claim for recovery filed against the second injury fund, no proceedings for compensation under this chapter shall be maintained unless a claim therefor is filed with the division within two years after the date of injury or death, or the last payment made under this chapter on account of the injury or death, except that if the report of the injury or the death is not filed by the employer as required by section 287.380, the claim for compensation may be filed within three years after the date of injury, death, or last payment made under this chapter on account of the injury or death. ... The statute of limitations contained in this section is one of extinction and not of repose.

(emphasis added).

Employee suffered an accident on April 18, 2007. Employer filed a Report of Injury on April 30, 2007. Employee did not file her claim for compensation until January 27, 2012.

At the hearing before the administrative law judge, the parties initially agreed to the administrative law judge's recitation of a stipulation that "the last payment for medical treatment was made on May 11, 2007." *Transcript*, page 6. Employee's counsel, thereafter, clarified that it is employee's position that when employee later received treatment at a clinic located at employer's premises, this tolled the statute of limitations, as it was the "last payment they made." *Id.* page 9. Employee's counsel was referring to treatment employee

Employee: Mary Compton, deceased

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received at a clinic on employer's premises on June 21 and July 12, 2010, for back pain. The clinic is open to employer's employees and their dependents; from 2004 to 2010, employee visited the clinic for a variety of medical conditions including bronchitis, high blood pressure, and nicotine addiction.

We write to make clear that even if employee's treatment in June or July 2010 involved a payment by employer that could be considered "the last payment" under Chapter 287 (a proposition which we by no means accept), we believe employee's claim was extinguished when she failed to file her claim for compensation on or before May 11, 2009. To rule otherwise, we would have to ignore the language of § 287.430 making clear that "[t]he statute of limitations contained in this section is one of extinction and not of repose."

Employee knew employer had decided to stop paying workers' compensation benefits as of May 11, 2007, on the basis of employer's position that her claimed April 2007 injury was not work-related. Employee's attempt to assert a claim for workers' compensation benefits more than two years after employer stopped paying them is nothing more than an attempt to revive an already extinguished claim. The Missouri courts have made clear that this is not permitted under a statute of extinction such as § 287.430. See, e.g., *Minor v. Apcoa, Inc.*, 31 S.W.3d 105, 109 (Mo. App. 2000); *Newbound v. Kingsford Charcoal Co.*, 786 S.W.2d 226, 228 (Mo. App. 1990).

For the foregoing reasons, and because we otherwise agree with the findings, analysis, and conclusions of the administrative law judge, we are persuaded that we have no jurisdiction over employee's claim for compensation, because it was not timely filed for purposes of § 287.430. Accordingly, employee's claim for compensation is denied.

Conclusion

We affirm and adopt the award of the administrative law judge, as supplemented herein.

The award and decision of Administrative Law Judge Maureen Tilley, issued December 21, 2012, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 1st day of November 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

FINAL AWARD

Employee: Mary Compton

Injury No. 07-036344

Dependents: N/A

Employer: Briggs & Stratton Corp.

Additional Party: Second Injury Fund

Insurer: Self Insured

Hearing Date: October 15, 2012

Checked by: MT/rmm

SUMMARY OF FINDINGS

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? April 18, 2007.
5. State location where accident occurred or occupational disease contracted: Butler County, 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? N/A because denied based on Statue of limitations.
9. Was claim for compensation filed within time required by law? No.
10. Was employer insured by above insurer? Yes.

11. Describe work employee was doing and how accident happened or occupational disease contracted: Employee sustained an accident to her lumbar spine when she was pulling on an oil tube.
12. Did accident or occupational disease cause death? No.
13. Parts of body injured by accident or occupational disease: Lumbar Spine.
14. Nature and extent of any permanent disability: N/A because denied based on Statue of limitations.
15. Compensation paid to-date for temporary total disability: None.
16. Value necessary medical aid paid to-date by employer-insurer: \$1,621.74.
17. Value necessary medical aid not furnished by employer-insurer: N/A.
18. Employee's average weekly wage: \$480.26.
19. Weekly compensation rate: \$320.19.
20. Method wages computation: By agreement.
21. Amount of compensation payable: None.
22. Second Injury Fund liability: None.
23. Future requirements awarded: None.

FINDINGS OF FACT AND RULINGS OF LAW

On October 15, 2012, the employee, Mary Compton, appeared in person and with her attorney, Michael Moroni, for a hearing for a final award. The employer was represented at the hearing by its attorney, Mark Kornblum. The Second Injury Fund was represented by attorney, Jonathan Lintner. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with the findings of fact and rulings of law, are set forth below as follows:

UNDISPUTED FACTS:

1. The Employer was operating under and subject to the provisions of the Missouri Workers' Compensation Act and its liability was self-insured. The third party administrator is Enterprise Comp, Inc.
2. That on April 18, 2007, the Employee was an Employee of Briggs & Stratton Corporation in Butler County, Missouri and was working under the Missouri Workers' Compensation Act.
3. That on April 18, 2007, the Employee sustained an accident injury or occupational disease arising out of and in the course of her employment.
4. That the Employer had notice of the Employee's accident and injury.
5. That the average weekly wage was \$480.26 and the permanent partial disability rate was \$320.19.
6. Medical aid has been furnished by the Employer in the amount of \$1,621.74.
7. No temporary total disability benefits have been paid.
8. That the Claim for Compensation was filed with the Division of Workers' Compensation on January 27, 2012.
9. That the last payment for medical treatment, on account of the injury, was made by the Employer on May 11, 2007.
10. That if it is determined that there is Second Injury Fund liability, a 10% multiplicity/load factor will be applied.

ISSUES:

1. Whether the Claim for Compensation is barred by the Statute of Limitations.

2. Whether the Employee's injury was medically and causally related to the accident or occupational disease.
3. Whether the employee has sustained any permanent partial disability as a result of the April 18, 2007 injury.

EXHIBITS:

The following exhibits were offered and admitted into evidence:

Employee's Exhibits:

- A. Report of Dr. Dwight Woiteshek.
- B. Records from the Missouri Division of Workers' Compensation.
- C. Medical records from Dr. Annamaria Guidos.
- D. Medical records from Brain & NeuroSpine Clinic of Missouri.
- E. Medical records from Poplar Bluff Medical Partners.
- F. Medical records from Ozark Physical Therapy.
- G. Medical records from Tinsley Medical Clinic.
- H. Medical records from Missouri Delta Medical Center.
- I. Report from Rushin Chiropractic Center.
- J. Medical records from Briggs & Stratton Health Center.
- K. Medical records from Orthopaedic Associates.
- L. Medical records from Drs. Tolentino and Tinsley.
- M. Medical records from The Surgery Center.
- N. Medical records from Dr. Rickey Lents.

Employer-Insurer's Exhibits:

1. Correspondence from Donna Biri to Mary Compton, dated May 21, 2007.
2. Deposition transcript of Dr. Sandra Tate.

The Second Injury Fund did not offer any exhibits.

FINDINGS OF FACT:

On April 18, 2007, the Employee, Mary Compton, was pulling on large tubs which contained oil tubes. In the process, she sustained an initial injury to the lumbar spine. The Employer/Insurer provided medical treatment to the Employee. She was treated at the clinic, which is adjacent to Briggs & Stratton Corporation's facility. On May 21, 2007, the Employer sent a letter to the Employee, advising that the medical condition in question was not causally related to the April 18, 2007 injury, and that no additional medical treatment would be provided under workers' compensation.

The Employee testified that she received no additional medical treatment following that time and her employment with Briggs & Stratton Corporation ended on September 26, 2008. In 2010, Ms. Compton returned to the clinic, requesting medical treatment for her lumbar spine. She did not inform anyone that this treatment was related to her 2007 work injury. The medical bills were paid through her husband's group health insurance. The Employee testified that she made no request that Briggs & Stratton provide her additional treatment under workers' compensation.

The Employee was evaluated by Dr. Dwight Woiteshek on April 17, 2012. It was Dr. Woiteshek's opinion that the employee sustained a permanent partial disability of 20% of the body as a whole, at the lumbar spine, due to the diagnosis of a right paracentral protrusion of the L2 disk with mild right foraminal encroachment. Employee complained of ongoing pain and limitations in her lumbar spine.

Dr. Sandra Tate testified on behalf of the Employer/Insurer. It was Dr. Tate's testimony that Employee retains no permanent partial disability as a result of the April 18, 2007 injury. Dr. Tate testified further that Ms. Compton's lumbar spine condition is degenerative in nature and unrelated to the April 19, 2007 work injury.

Other than the Employee, the only live witness was Ms. Donna Biri. Ms. Biri was employed by Briggs & Stratton Corporation from 1989 until 2012. She was a human resources assistant for Briggs & Stratton. Her duties included the day to day handling of workers' compensation matters, as well as FMLA.

Ms. Biri testified that the Employee's injury of April 18, 2007 was reported on a timely basis and that authorized medical treatment was provided at the Briggs & Stratton clinic, which is adjacent to the manufacturing facility. However, the clinic is operated by Quad Med, a nationwide company. Briggs & Stratton does not operate the clinic, nor are any of the clinic employees employed by Briggs & Stratton. Briggs & Stratton's group health insurance is self-funded by Briggs & Stratton.

Ms. Biri testified that while the treatment at the clinic was authorized under workers' compensation, an opinion was received from the treating physician, indicating that Ms. Compton's lumbar spine condition was not work-related. Following this opinion, Ms. Biri mailed a letter to the Employee, dated May 21, 2007, advising Employee that her injury was being denied as work-related. The letter further indicated that the condition was being viewed as non-occupational. Ms. Biri further testified that she was never contacted by Employee, after the issuance of that letter, requesting additional lumbar spine treatment. The Employee was terminated by Briggs & Stratton Corporation in 2008.

In addition, Ms. Biri testified that the Employee did not contact her, or the Company, with regard to any request for medical treatment in 2010. It was her additional testimony that the last payment made by Briggs & Stratton Corporation, on account of the injury, was on May 11, 2007.

APPLICABLE LAW:

- Revised Missouri Statute Section 287.430 states:

“Except for a claim for recovery filed against the Second Injury Fund, no proceedings for compensation under this chapter shall be maintained unless a claim therefore is filed with the Division within two years after the date of injury or death, or the last payment made under this chapter on account of the injury or death, except that if the report of the injury or the death is not filed by the Employer as required within Section 287.380, the Claim for Compensation may be filed within three years after the date of injury, death, or last payment made under this chapter on account of the injury or death.”

The burden is on the Employee to prove all material elements of the Employee’s claim. *Melvies v Morris*, 422 S.W.2d, 335(Mo.App.1968).

RULINGS OF LAW:

Issue I. Statute of Limitations:

The record reflects that the Report of Injury was filed within 30 days of the injury on April 18, 2007. Therefore, the two year statute of limitations would apply. The parties stipulated that the Claim for Compensation was filed on January 27, 2012. Employer’s position is that the last payment made, on account of the injury, was made on May 11, 2007. If this position is accepted, then not only has the two year statute of limitations run, but also the three year statute. Under the two year statute of limitations, the claim must have been filed no later than May 11, 2009. Although the three year statute of limitations does not apply, even if it did, the claim would have had to be filed no later than May 11, 2010.

The Employee desires a finding that the Claim for Compensation was filed within the statute of limitations. It is her position that the treatment at the Briggs & Stratton Clinic in 2010 extended the statute of limitations, since the treatment was authorized under workers’ compensation, and that the claim for compensation was filed before the statute of limitations had expired.

However, a review of the medical records, as well as the testimony of the employee and Ms. Biri, refutes that position. The Briggs & Stratton Clinic medical records do document complaints of lumbar spine pain. However, the records of January 25, 2010, indicate that the Employee presented to the clinic for treatment with regard to smoking cessation. The records for that date do not document lumbar spine pain. In those same records, the first mention of back pain is on June 21, 2010. There is no indication within those records that the Employee was requesting treatment under workers’ compensation, nor was there any indication that the Employee was relating her back pain to the April 18, 2007 work injury.

The Employee testified that when she returned to the Briggs & Stratton Clinic in 2010, she did not tell anyone that she was seeking treatment for a work injury, or for any work related condition. She acknowledged that the bills were paid through group health insurance. The Employee's testimony does not support her contention that the treatment in 2010 was work related, nor that she had requested treatment under workers' compensation, nor that she had contacted anyone at Briggs & Stratton to authorize treatment under workers' compensation.

Ms. Donna Biri was a credible witness on behalf of the Employer. Ms. Biri's testimony was that the last payment made on account of the injury was on May 11, 2007. On May 21, 2007, Ms. Biri informed the Employee that no additional treatment was being provided under workers' compensation. This is supported by Employer's Exhibit 2, a letter from Ms. Biri to the Employee.

In addition, Ms. Biri testified that the Briggs & Stratton Clinic is not owned or operated by the Company. Ms. Biri testified that she was not contacted in 2010 for authorization to treat the Employee for the injury of April 18, 2007, nor that Ms. Compton had ever asked Ms. Biri for additional medical treatment after the May 21, 2007 letter (Exhibit 2).

Based upon all the evidence presented, I find that the Claim for Compensation was not filed within the time prescribed by law. I find that the last payment made by the Employer, on account of the injury, was made on May 11, 2007. I find that the two year statute of limitations would apply. Since the claim was not filed on or before May 11, 2009, the claim was filed out of time. Therefore, Employee's claim for compensation is denied.

In light of the finding that the claim was not filed in the time prescribed by law, all other issues are moot and will not be ruled upon. Furthermore, based on the findings, the claim against the Second Injury Fund is denied.

Employee: Mary Compton

Injury No. 07-036344

Made by:

Maureen Tilley
Administrative Law Judge
Division of Workers' Compensation

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

Injury No.: 08-124131

Employee: Mary Compton, deceased
Substitute Claimant: Kevin Compton, spouse
Employer: Briggs & Stratton Corporation
Insurer: Self-Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

This workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 287.480 RSMo. Having read the briefs, reviewed the evidence, and considered the whole record, we find that the award of the administrative law judge denying compensation is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, we affirm the award and decision of the administrative law judge with this supplemental opinion.

Discussion

Medical causation

In May 2000, employee underwent right carpal tunnel and dorsal compartment releases. Employee also underwent bilateral elbow surgeries at some point (the record before us does not contain the surgical notes) and settled a related claim against employer for 10% permanent partial disability of each elbow. Employer discharged employee from employment in September 2008. In early 2010, treating doctors diagnosed bilateral cubital tunnel and carpal tunnel syndromes, and Dr. Trueblood performed bilateral ulnar nerve transpositions and a left carpal tunnel release.

The dispositive issue before us is whether employee has met her burden of proving that her new upper extremity conditions were caused by her work for employer. We agree with the administrative law judge's conclusion that employee failed to meet her burden of proof. We wish to briefly discuss the expert medical opinion evidence in this matter.

Dr. Tate offered a somewhat puzzling series of opinions regarding causation of employee's carpal tunnel syndrome. Dr. Tate originally opined, in her report dated August 8, 2011, that employee's job duties for employer appeared to be the prevailing cause of her carpal tunnel syndrome. Then, at her deposition, in response to a series of leading questions, Dr. Tate suggested that she was talking about employee's *prior* work comp claims.

It is unclear to us why Dr. Tate would discern a need, in her original report, to contrast employee's work for employer with employee's subsequent work for Heartland Express if she were opining about a carpal tunnel syndrome claim from 10 years ago, but given her

Employee: Mary Compton, deceased

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ultimate conclusions, her testimony provides little support for an award in favor of employee as to the diagnosis of bilateral carpal tunnel syndrome. And Dr. Tate's theory that employee's ulnar neuropathy cannot be linked to any work exposure where employee's symptoms did not manifest until more than a year after she quit working for employer stands essentially un rebutted on this record, as Dr. Woiteshek offered no contrary theory.

Turning to Dr. Woiteshek's report, we discover that he only offered causation opinions as to the left upper extremity and wholly ignored the right, and did not provide any explanation whatsoever for the lag time between employee's last day of work in September 2008 and the onset of left upper extremity symptoms in November 2009. The absence of any such explanation is even more concerning when we consider the negative left upper extremity findings (and findings of a stronger left grip strength than right) contained in the July 30, 2009, treatment record from Tinsley Medical Clinic. We also note that Dr. Woiteshek did not specifically describe any of employee's work duties or explain why they should be seen as the prevailing factor causing employee's left upper extremity conditions, but instead rendered his opinions in a conclusory fashion.

Given all of these circumstances, we believe that Dr. Woiteshek's opinions in this matter lack adequate foundation, and for this reason we affirm the administrative law judge's award and deny the claim.

Conclusion

We affirm and adopt the award of the administrative law judge, as supplemented herein.

The award and decision of Administrative Law Judge Maureen Tilley, issued December 21, 2012, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 1st day of November 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

FINAL AWARD

Employee: Mary Compton

Injury No. 08-124131

Dependents: N/A

Employer: Briggs & Stratton Corp

Additional Party: Second Injury Fund

Insurer: Self Insured

Hearing Date: October 15, 2012

Checked by: MT/rmm

SUMMARY OF FINDINGS

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 alleged accident or onset of alleged occupational disease? September 30, 2008.
5. State location where alleged accident occurred or alleged occupational disease contracted:
Butler County, 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? N/A, Denied on causation.
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 happened or occupational disease contracted: Employee alleged that she sustained an occupational disease to her bilateral upper extremities and her left wrist.
12. Did accident or occupational disease cause death? No.
13. Parts of body injured by alleged accident or alleged occupational disease: Left and right upper extremities and left wrist.
14. Nature and extent of any permanent disability: N/A, Denied based on medical causation.
15. Compensation paid to-date for temporary total disability: None.
16. Value necessary medical aid paid to-date by employer-insurer: None.
17. Value necessary medical aid not furnished by employer-insurer: N/A.
18. Employee's average weekly wage: \$475.00.
19. Weekly compensation rate: \$316.67.
20. Method wages computation: By agreement.
21. Amount of compensation payable: None.
22. Second Injury Fund liability: None.
23. Future requirements awarded: None.

FINDINGS OF FACT AND RULINGS OF LAW

On October 15, 2012, the employee, Mary Compton, appeared in person and with her attorney, Michael Moroni, for a hearing for a final award. The employer was represented at the hearing by its attorney, Mark Kornblum. The Second Injury Fund was represented by attorney, Jonathan Lintner. At the time of the hearing, the parties agreed on certain undisputed facts and identified the issues that were in dispute. These undisputed facts and issues, together with the findings of fact and rulings of law, are set forth below as follows:

UNDISPUTED FACTS:

1. The Employer was operating under and subject to the provisions of the Missouri Workers' Compensation Act and that its liability was self-insured.
2. That on or about the date of the alleged accident or occupational disease the Employee was an Employee of the Employer and was working under the Missouri Workers' Compensation Act.
3. That the Employee's Claim for Compensation was filed within the time allowed by law.
4. That the average weekly wage is \$475.00 and the permanent partial disability rate is \$316.67.
5. That no medical aid has been furnished by the Employer.
6. That no temporary total disability benefits have been provided by Employer.
7. In the event that Second Injury Fund liability is awarded, the multiplicity/load factor is 10%.

ISSUES:

1. Whether the Employee sustained an accident or occupational disease arising out of and in the course of her employment.
2. Whether the Employer had statutory notice of the Employee's accident or occupational disease.
3. Whether the Employee's injury was medically, causally related to accident or occupational disease.
4. Whether the Employee has sustained any permanent partial disability as a result of the accident or occupational disease.

EXHIBITS:

The following exhibits were offered and admitted into evidence:

Employee's Exhibits:

- A. Report of Dr. Dwight Woiteshek.
- B. Records from the Missouri Division of Workers' Compensation.
- C. Medical records from Dr. Annamaria Guidos.
- D. Medical records from Brain & NeuroSpine Clinic of Missouri.
- E. Medical records from Poplar Bluff Medical Partners.
- F. Medical records from Ozark Physical Therapy.
- G. Medical records from Tinsley Medical Clinic.
- H. Medical records from Missouri Delta Medical Center.
- I. Report from Rushin Chiropractic Center.
- J. Medical records from Briggs & Stratton Health Center.
- K. Medical records from Orthopaedic Associates.
- L. Medical records from Drs. Tolentino and Tinsley.
- M. Medical records from The Surgery Center.
- N. Medical records from Dr. Rickey Lents.

Employer-Insurer's Exhibits:

- 1. Correspondence from Donna Biri to Mary Compton, dated May 21, 2007.
- 2. Deposition transcript of Dr. Sandra Tate.

The Second Injury Fund did not offer any exhibits.

FINDINGS OF FACT:

The Employee, Mary Compton, was employed by the Employer, Briggs & Stratton Corporation, was employed by the Company from 1989 until 2008. She is alleging injuries to the left elbow and left wrist as a result of her repetitive work duties for the Employer, a manufacturing company. By way of history, the Employee previously sustained repetitive work injuries at Briggs & Stratton Corporation. She underwent a right de Quervain's release, as well as a right-sided carpal tunnel release, on May 23, 2000. Those procedures were performed by Dr. Rickey Lents. In addition, Employee underwent bilateral epicondylectomies of the elbows approximately 11 years ago. A workers' compensation claim was filed with regard to the bilateral elbows. That claim was settled in 2000. The claim settled for 10% of the left arm and 10% of the right arm.

The Employee subsequently underwent a left ulnar nerve release and a left carpal tunnel release in April of 2010, performed by Dr. Trueblood.

Employee testified that she is not currently working. She last worked for Briggs & Stratton in September of 2008. Her only employment since that time was a three day period in 2009, working for Heartland Express. She was employed by Briggs & Stratton Corporation for approximately 18 years. She testified that her last day of work was September 26, 2008.

At the hearing, Employee described her previous work duties and the fact that she used her hands all day. She worked in the die cast department and molded engine blocks as well. She further described working on flywheel guards, oil tubes and she would set governor speeds. She did perform lifting. The Employee testified that both upper extremities would be painful during her years with the Company, but that it was part of her normal work duties. She did not inform anyone at Briggs & Stratton of these problems and she did not ask for any medical treatment while she was still employed. She testified that although she underwent a left elbow surgery some years ago, she continued to have pain and other symptoms since that time. Following her departure from Briggs & Stratton in 2008, Employee testified that she continued to have the same symptoms in both arms. Following her departure from the company she did not initially request any medical treatment.

In 2009, the Employee sought medical treatment from Dr. Trueblood. The first medical treatment was on December 14, 2009. That report indicates that the Employee complained of a one and a half to two month history of left hand, small and ring finger numbness with tingling up above her wrist to the level of the elbow. She reported no antecedent trauma to that area. That report does not contain any description of an injury or repetitive job duties. Dr. Trueblood was concerned that the source of these complaints was cervical in nature, therefore he ordered an MRI of the cervical spine. That MRI revealed likely C8 radiculopathy. Dr. Trueblood recommended a referral to Dr. Tolentino.

The Employee returned to see Dr. Trueblood on March 22, 2010. At that time she reported ulnar and median nerve symptoms in the hands, bilaterally. Dr. Trueblood recommended a left submuscular transposition of the ulnar nerve and a left-sided carpal tunnel release. Those procedures were performed by Dr. Trueblood in April of 2010. Dr. Trueblood last saw Employee on April 15, 2010.

Dr. Sandra Tate evaluated the Employee as well. It was Dr. Tate's opinion that the left upper extremity surgeries (elbow and wrist) performed by Trueblood in 2010 were not medically and causally related to the Employee's work duties in the years leading up to her separation from the Employer in 2008. Dr. Tate stated that it would be difficult to state that the ulnar neuropathy was related to work as the left hand symptoms started in November 2009 when she was no longer working.

Dr. Woiteshek saw Employee on April 17, 2012. He opined that Employee's repetitive work was the prevailing factor for her left elbow overuse syndrome and left carpal tunnel which he rated at 30% of the wrist and 30% of the elbow. Dr. Woiteshek failed to give a causation opinion regarding Employee's right upper extremity.

Employee testified that she has pain in the left arm and wrist on a regular basis. Her fingers will cramp and she does have difficulty with gripping and lifting. She testified that her left ring and small fingers are claw-like in appearance. She also testified as to back and neck complaints, which are not a portion of this claim for compensation.

Ms. Donna Biri testified on behalf of the Employer. Ms. Biri was employed by Briggs & Stratton Corporation from 1989 until 2012. She was a human resources assistant. Her work duties involved the day to day handling of workers' compensation matters.

Ms. Biri testified that the Employee did not inform her, or Briggs & Stratton, of any complaints to the left upper extremity since her previous case was settled approximately 12 years ago. In addition, Ms. Biri testified that at no time prior to the final hearing date, had the Employee asked for any medical treatment. The Employee's testimony disputes Ms. Biri's testimony. The Employee testified that she spoke with Ms. Biri over the phone and asked Ms. Biri if the Company would be willing to provide medical treatment for her left arm. The Employee further testified that she was told by Ms. Biri that the condition would not be accepted under workers' compensation.

Ms. Biri further testified that if the Employee had asked for additional medical evaluation, she would have completed a report and would have kept it in the Employee's human resources file. In addition, she would have mailed a letter to the Employee confirming the denial of any additional medical evaluation or treatment for the left upper extremity. Ms. Biri further testified that neither of these tasks were completed, since she did not have a phone conversation with the Employee.

RULINGS OF LAW:

Issue 3. Medical causation

Dr. Woiteshek saw Employee on April 17, 2012. He opined that Employee's repetitive work was the prevailing factor for her left elbow overuse syndrome and left carpal tunnel which he rated at 30% of the wrist and 30% of the elbow. Dr. Woiteshek failed to give a causation opinion regarding Employee's right upper extremity.

In 2009 the Employee sought medical treatment from Dr. Trueblood. The first medical treatment was on December 14, 2009. That report indicates that the Employee complained of a one and a half to two month history of left hand, small and ring finger numbness with tingling up above her wrist to the level of the elbow.

Dr. Tate opined that the left upper extremity surgeries (elbow and wrist) performed by Trueblood in 2010 were not medically and causally related to the Employee's work duties in the years leading up to her separation from the Employer in 2008. Dr. Tate stated that it would be difficult to state that the ulnar neuropathy was related to work as the left hand symptoms started in November 2009 when she was no longer working.

The Employee failed to provide a causation opinion regarding Employee's right upper extremity. Based on all of the evidence presented, I find that Employee did not meet her burden of proof to show that her right upper extremity condition was medically causally related to the alleged occupational disease. Furthermore, I find that Employee's work at Briggs and Stratton was not the prevailing factor in causing her right upper extremity condition.

Based on all of the evidence presented, I find that Dr. Tate's opinion regarding medical causation was more credible than Dr. Woiteshek's opinion on this issue. I further find that Employee did not meet her burden of proof that her left upper extremity condition and her left wrist condition were medically causally related to the alleged occupational disease. I further find that that Employee's work at Briggs and Stratton was not the prevailing factor in causing her left upper extremity condition and left hand condition.

Based on the above findings, Employee's claim for compensation is denied, furthermore all other issues are moot and will not be ruled upon. Based on the denial of the primary claim, the Second Injury Fund claim is also denied.

Employee: Mary Compton

Injury No. 08-124131

Made by:

Maureen Tilley
Administrative Law Judge
Division of Workers' Compensation