

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

Injury No.: 03-145703

Employee: Doris Dobbs
Employer: Jefferson Memorial Hospital
Insurer: Self-Insured
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Dismissed)

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 February 8, 2010. The award and decision of Administrative Law Judge Carl Strange, issued February 8, 2010, is attached and incorporated by this reference.

The Commission further approves and affirms the administrative law judge's allowance of attorney's fee herein as being fair and reasonable.

Any past due compensation shall bear interest as provided by law.

Given at Jefferson City, State of Missouri, this 24th day of June 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

AWARD

Employee: Doris Dobbs

Injury No. 03-145703

Dependents: N/A

Employer: Jefferson Memorial Hospital

Additional Party: SIF (Voluntarily Dismissed)

Insurer: Self-Insured

Hearing Date: October 29, 2009

Checked by: CS/rf

SUMMARY OF FINDINGS

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 1, 2003
5. State location where accident occurred or occupational disease contracted: Jefferson 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? Yes (See Findings)
9. Was claim for compensation filed within time required by law? Yes (See Findings)
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident happened or occupational disease contracted: Employee developed bilateral carpal tunnel syndrome as a result of her work activities.

12. Did accident or occupational disease cause death? N/A
13. Parts of body injured by accident or occupational disease: Bilateral Upper Extremities at the Level of the Wrist
14. Nature and extent of any permanent disability:
 - 18% of the right wrist at the 175 week level
 - 18% of the left wrist at the 175 week level
 - 15% multiplicity factor.
15. Compensation paid to date for temporary total disability: \$0.00
16. Value of necessary medical aid paid to date by employer-insurer: \$0.00
17. Value of necessary medical aid not furnished by employer-insurer: EI to hold EE harmless on \$10,135.83 (See Stipulation 7)
18. Employee's average weekly wage: \$477.23
19. Weekly compensation rate:
 - \$317.84 for temporary total disability
 - \$317.84 for permanent partial disability
20. Method wages computation: By Agreement
21. Amount of compensation payable:
 - 6 weeks of temporary total disability: (\$1,907.01) (See Stipulation 7)
 - 72.45 weeks of permanent partial disability: (\$23,027.51)
 - 2 weeks of disfigurement: (\$635.68)

TOTAL: \$25,570.20
22. Second Injury Fund liability: None (Voluntarily Dismissed)
23. Future requirements awarded: N/A

Said payments shall be payable as provided in the findings of fact and rulings of law, and shall 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 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Thomas P O'Driscoll.

FINDINGS OF FACT AND RULINGS OF LAW

On October 29, 2009, the employee, Doris Dobbs, appeared in person and by her attorney, Thomas P O'Driscoll, for a hearing for a final award. The employer-insurer was represented at the hearing by its attorney, Dennis Tesreau. 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. On or about November 1, 2003, Jefferson Memorial Hospital was operating under and subject to the provisions of the Missouri Workers' Compensation Act and was duly qualified as a self-insured employer.
2. On or about November 1, 2003, the employee was an employee of Jefferson Memorial Hospital and was working under and subject to the provisions of the Missouri Workers' Compensation Act.
3. On or about November 1, 2003, the employee sustained an occupational disease.
4. The employer had notice of employee's accident.
5. The employee's average weekly wage was \$477.23, her rate for temporary total disability and permanent partial disability is \$317.84.
6. The employer has paid no temporary total disability benefits.
7. Written "Stipulation of Facts for Hearing Dated October 29, 2009" signed by both parties' attorneys and attached hereto and fully incorporated herein by this reference.

ISSUES:

1. Arising out of
2. Statute of Limitations
3. Medical Causation
4. Nature and Extent

EXHIBITS:

The following exhibits were offered and admitted into evidence:

Employee's Exhibits

- A. Medical Records of Jefferson Memorial Hospital
- B. Medical Records of Dr. Kevin Sides
- C. Medical Records and Bills of Dr. Dwayne Helton
- D. Medical Records and Bills of Dr. John McGarry
- E. Medical Records and Bills of Dr. Jeffrey Draves
- F. Medical Records and Bills of Dr. Craig Ruble
- G. Deposition of Dr. Robert Margolis

H. Job Description of Physical Therapy Technical Aide

Employer-Insurer's Exhibits

1. Deposition of Dr. R. Evan Crandall (as highlighted); and
2. Jefferson Memorial Hospital Position Description for Rehab Technician effective August 5, 2002.

FINDINGS OF FACT:

Based on the testimony of Doris Dobbs ("employee") and the medical records and reports admitted, I find as follows:

At the time of the hearing, the employee was 49 years old and had worked for Jefferson Memorial Hospital ("employer") for the past 20 years. According to her testimony, the employee first sought treatment for her wrists in 1997 with Dr. Sides who prescribed her splints. Additionally, she had nerve conduction studies from Dr. Keely on September 29, 1997 (Employer-Insurer Exhibit 1, Deposition Exhibit 2, Page 2). At that time, the employee was working as a physical therapy rehab technician/aide where she was required to repetitively use her upper extremities to move patients, utilize gate belts, push wheelchairs, and lift patients (Employee Exhibit H)(Employer-Insurer Exhibit 2). The employee continued to work for the employer for the next several years without missing work for her wrists' condition. The employee began working in the employer's histology lab in 2000. While in the histology lab, the employee was required to work with a microtone where she would roll a knob 50,000 to 60,000 times in a three hour period every day. For the rest of the day, the employee would pick up specimens, take requisitions, keep up stock, and do computer work. All of her duties at the histology lab required constant use of her upper extremities. Since she continued to have problems with her wrists, the employee sought additional treatment for her wrists on August 17, 2000. At that time, the employee complained of pain in her left wrist and pain in her right shoulder with occasional numbness in hands that comes and goes. Dr. Sides diagnosed her with right proximal biceps tendinitis and left wrist tendonitis (Employee Exhibit B, Page 3). The employee went through some physical therapy, and Dr. Sides noted that the left wrist strain was resolved by September 14, 2000 (Employee Exhibit A1, Pages 65-71)(Employee Exhibit B, Page 4).

The employee next sought treatment for her wrists with Dr. Dwayne Helton on October 10, 2003. At that time, Dr. Helton diagnosed the employee with carpal tunnel syndrome and planned to order bilateral upper extremity nerve conduction velocity studies (Employee Exhibit C, Pages 2-3). Dr. John McGarry performed the nerve conduction studies on November 4, 2003 and noted abnormal nerve conduction study with definite evidence for median nerve entrapment on each wrist with a greater abnormality on the right than the left (Employee Exhibit D, Page 10). On December 22, 2003, Dr. Helton diagnosed the employee with moderately severe bilateral carpal tunnel and planned to refer the employee out for a surgery consult since she has failed wrist splints (Employee Exhibit C, Page 4). While getting treatment from Dr. Jeffrey Draves, the employee complained of carpal tunnel in both arms on March 17, 2004. The

employee continued to work for the employer and did not miss any work due to her bilateral carpal tunnel syndrome. On January 27, 2005, the employee filed her claim for compensation against the employer.

Dr. John McGarry did a second nerve conduction study on August 30, 2005 that supported his previous diagnosis of median nerve entrapment at the wrist on the right more than left (Employee Exhibit D, Pages 4-7). On October 13, 2005, Dr. Craig Ruble reviewed Dr. McGarry's nerve conduction studies and noted that the employee complained of bilateral hand numbness, tingling and pain that she could not relate to anything other than activity at work. Dr. Ruble provided the employee with splints and anti-inflammatory medication with a discussion of the risks of surgery. On October 20, 2005, Dr. Ruble performed a right carpal tunnel release on the employee. He performed the left carpal tunnel release on November 10, 2005. After releasing her back to work on December 5, 2005, Dr. Ruble noted on December 20, 2005 that the employee complained of a little weakness with her grip strength, occasional tingling and a little bit of soreness over the incision but stated that her releases were doing well. As a result, Dr. Ruble released her from his care to return on an as needed basis (Employee Exhibit F).

On March 30, 2006, the employee saw Dr. Robert Margolis for an evaluation. Dr. Margolis issued his report on April 24, 2006 and gave his deposition on November 20, 2007. Following his evaluation of the employee and a review of her medical records, Dr. Margolis noted that the employee first developed upper extremity symptoms while working in the physical therapy department but further continued while she was a histology technician. Further, he diagnosed the employee with bilateral symptomatic carpal tunnel syndrome and opined that her employment at Jefferson Memorial Hospital is the substantial prevailing factor in causing her bilateral carpal tunnel syndrome. In addition to noting that there is a synergistic effect between both wrists, Dr. Margolis opined that the employee suffered a permanent partial disability of 30 percent of each upper extremity at the level of the wrist (Employee Exhibit G).

On September 5, 2006, Dr. R. Evan Crandall evaluated the employee and later gave his deposition on January 8, 2008. At the time of her initial appointment, the employee filled out a questionnaire where she was asked about what part of her job that she thought caused your problem. As a result, the employee provided a detailed description of her job as a physical therapy technician and noted that her hands hurt so much she had to find another job and that is when she went to the lab. At the time of the hearing, the employee testified that she thought Dr. Crandall wanted her thoughts of the original cause of her bilateral carpal tunnel. After noting that the employee does not claim that the histology assistant work was the cause of her bilateral carpal tunnel, Dr. Crandall opined that the employee's transportation work was not the substantial factor in the cause of her bilateral carpal tunnel syndrome but that the employee has medical risk factors of age, female gender, abnormal hormone effect, high blood pressure, and medications needed to treat it that was most often the cause. Although he admits that he does not know the extent of the employee's outside work or the employee's activities as a histology assistant, Dr. Crandall opined that the employee's bilateral carpal tunnel was not related to her work based on his evaluation of the job description provided by the employer-insurer's adjuster. In addition to testifying that he did not know how many histology assistants that the employer had, Dr. Crandall testified that "a histology technician can't get carpal tunnel syndrome." Dr.

Crandall also opined that the employee suffered a permanent partial disability of 7% of each upper extremity at the level of the wrist (Employer-Insurer Exhibit 1).

At the time of the hearing, the employee testified that she continued to have weakness in her hands with pains that shoot up her arm. Further, the employee has difficulty gripping and twisting open jars.

APPLICABLE LAW:

- Section 287.067.4: This subsection defines an occupational disease as “an identifiable disease arising with or without human fault out of and in the course of employment”. The disease “must appear to have its origin in a risk connected with employment and to have flowed from that source as a rational consequence.”
- Section 287.067.2: This subsection states that an occupational disease is compensable if it is clearly work related and meets the requirements of an injury under Section 287.020, subsection 2 and 3. It further provides that an occupational disease is not compensable merely because work was a triggering or precipitating factor.
- Section 287.020.2: Subsection 2 of 287.020 states that “an injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability”.
- Section 287.020.3: Subsection 3(1) of 287.020 requires that an injury be “incidental to and not independent of the relationship of employee and employer”. It excludes “ordinary, gradual deterioration or progressive deterioration of the body caused by aging”, except where it “follows as an incident of employment”. Subsection 3(2) adds that an injury shall be deemed to arise out of and in the course of employment only if (a) “the employment is a substantial factor in causing the injury”, (b) “it can be seen to have followed as a natural incident of employment”, (c) “it can be fairly traced to employment as approximate cause”, (d) “it does not come from a hazard or risk unrelated to employment which workers would have been equally exposed outside of and unrelated to employment in normal non- employment life”.
- Section 287.063.1: An employee shall be conclusively deemed to have been exposed to the hazards of an occupational disease when for any length of time, however short, he is employed in an occupation or process in which the hazard of the disease exists, subject to the provisions relating to occupational disease due to repetitive motion, as is set forth in subsection 7 of Section 287.067 RSMo.
- Section 287.063.2: The employer liable for the compensation in this section provided shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease for which claim is made regardless of the length of time of such last exposure.
- Although the workers’ compensation law must be liberally construed in favor of the employee, the burden is still on the claimant to prove all material elements of her claim. *Melvies v Morris*, 422 S.W.2d, 335(Mo.App.1968). The employee has the burden of proving that not only she sustained an accident that arose out of and in the course of her employment, but also that there is a medical causal relationship between her accident and

the injuries and the medical treatment for which she is seeking compensation. Griggs v. A.B. Chance Company, 503 S.W.2d 697(Mo.App.1973).

- The Court of Appeals in Bloss v. Plastic Enterprises, 32 S.W.3d 666 (Mo. App. 2000), citing Kasl v. Bristol Care, Inc., 984 S.W.2d 852,853 (Mo. Banc 1999), held that if work is a substantial factor in the cause of the injury, it can be compensable even if the injuries were triggered or precipitated by the work. The Court of Appeals in Cahall v. Cahall, 963 S.W.2d 368 (Mo. App. 1998), held that a work related accident can be both a triggering event and a substantial factor. They further stated that there is no bright line test or minimum percentage defining a substantial factor. A causative factor may be substantial even if it is not the primary or most significant factor. The Court held that one-third of a cause may be sufficient to be a substantial factor.
- It is sufficient that causation be supported only by reasonable probability. See Davis v. Brezner, 380 S.W.2d 523 (Mo. App. 1964) and Downing v. Willamette Industries, Inc., 895 S.W.2d 658 (Mo. App. 1995).
- In addition to these standard notice principles that are applicable to traditional “accident” cases, there are several recent cases which indicate that the notice obligation is either not applicable or may be modified in repetitive trauma cases. In Kintz v. Schnucks Markets, Inc., 889 S.W. 2d 121 (Mo. App. 1994), the Eastern District Court of Appeals agreed with the Commission’s finding that Section 287.420 RSMo., which requires notice to the employer within thirty days of the identified date of a single-event accident, does not apply to cases of repetitive trauma. Although the Court of Appeals did not preclude a finding that some notice may be required in repetitive trauma cases, it noted that “the characteristic of a job related injury without an identified traumatic event is that the employee does not have knowledge of causation without an expert’s diagnosis”. *I.d.* at 124. After noting that the facts in the Kintz decision did not involve a case where actual knowledge of causation occurred on an identified date, the Court noted that “there may be cases where notice is required for a claim of injury from repetitive trauma”. *I.d.* at 124. The Court then noted that Section 287.420 RSMo., presupposes knowledge of a work related injury. The Court stated that “an employee cannot give ‘written notice of the time, place and nature of the injury’ where he does not know and could not know facts which the notice requires”. *I.d.* at 124. The Court of Appeals concluded by stating that “thus, the statute is inapplicable to the facts of a repetitive trauma case such as this one, at least until the claimant has knowledge of those facts which must be in timely notice”. *I.d.* at 124.

RULINGS OF LAW:

Issue 1. Arising out of & Issue 3. Medical Causation

The employee in this case offered credible evidence to support a finding that her bilateral carpal tunnel syndrome was work related. At the time of the hearing, the employee testified that since 2000 she worked as a histology assistant that required constant use of her upper extremities including working with a microtone where she would roll a knob 50,000 to 60,000 times in a three hour period every day, picking up specimens, taking requisitions, keeping up on stock, and doing computer work. Prior to that time, the employee worked as a physical therapy rehab

technician where she was required to repetitively use her upper extremities to move patients, utilize gate belts, push wheelchairs, and lift patients. The employee filed her claim on January 27, 2005 alleging an injury date of November 1, 2003. Thus, her activities as a histology assistant would be the pertinent duties that last exposed her to the hazard of the occupational disease.

The medical evidence on the question of whether the employee's bilateral carpal tunnel syndrome was work related consisted of the testimony and reports of Dr. Margolis and Dr. Crandall. Dr. Crandall focused on the fact that the employee had medical risk factors of age, female gender, abnormal hormone effect, high blood pressure, and medications needed to treat it that was most often the cause of developing carpal tunnel syndrome. After the employer-insurer's adjuster provided Dr. Crandall with the job description of the employee's job duties, Dr. Crandall opined that the employee's bilateral carpal tunnel was not related to her work for the employer. At his deposition, Dr. Crandall admitted that he does not know how many histology assistants that the employer has, the extent of the employee's outside work, or the extent of the employee's duties as a histology assistant. Further, Dr. Crandall testified that "a histology technician can't get carpal tunnel syndrome" (Employer-Insurer Exhibit 1).

Conversely, Dr. Robert Margolis examined the employee and gathered a description of her work activities and outside activities. Following his examination and a review of the evidence, Dr. Margolis opined that her employment at Jefferson Memorial Hospital is the substantial prevailing factor in causing the employee's bilateral carpal tunnel syndrome.

After carefully reviewing all of the evidence, I find that Dr. Margolis' opinion on the issue of causation is more credible than the opinion of Dr. Crandall. I therefore find that the employee's work at Jefferson Memorial Hospital was a substantial factor in causing the employee's bilateral carpal tunnel syndrome, and that this condition was clearly work related. Based on these conclusions, I further find that on or about November 1, 2003, the employee sustained a compensable accident or occupational disease that arose out of and in the course of her employment, and the employee's diagnosed condition of bilateral carpal tunnel syndrome was medically causally related to that accident or occupational disease.

Issue 2. Statute of Limitations

The employer-insurer has also argued that the employee's claim should be barred due to violation of the statute of limitations. In order to address this claim, the initial dates of notice and statute of limitations must be calculated. Pursuant to section 287.063.3 RSMo., the statute of limitations shall not begin to run in cases of occupational disease until it becomes reasonably discoverable and apparent that an injury has been sustained related to such exposure. Further, section 287.420 RSMo. requires notice to be given to the employer no later than thirty days after the diagnosis of the condition unless the employee can prove the employer was not prejudiced by failure to receive the notice. In this case, the statute of limitations that would bar the employee's claim would not begin until April 24, 2006. On this date, Dr. Robert Margolis issued a report where he opined that her employment at Jefferson Memorial Hospital is the substantial prevailing factor in causing the bilateral carpal tunnel syndrome (Employee Exhibit G, Deposition Page 10). All prior medical references to the employee's condition failed to mention

the cause of her condition. Until April 24, 2006, the causal connection of the bilateral carpal tunnel to her work had not been reasonably discoverable and apparent since no doctor had provided such opinion in writing. Based on the evidence admitted, I find that the employee's statute of limitations on her occupational disease did not start to run until April 24, 2006. Since the employee's claim was filed prior to that date, I find that the employee has complied with the statute of limitations.

Issue 4. Nature and Extent of Disability

The parties have entered into a Stipulation of Facts for Hearing Dated October 29, 2009 regarding an award of temporary total disability benefits for bilateral carpal tunnel syndrome. If found compensable, the parties have agreed that the employee is owed temporary total disability benefits for a six (6) week period beginning with the date of her first surgery and ending three (3) weeks after the date of her second surgery, which amounts to \$1,907.01. Based on my above findings of compensability and the evidence, the employer-insurer is directed to pay to the employee the sum of \$317.84 for 6 weeks of temporary total disability benefits for a total of \$1,907.01.

The employee has also requested an award for permanent partial disability benefits. Based on the employee's complaints and the other medical evidence submitted, I find that the employee has an 18% permanent partial disability of his right upper extremity at the 175 week level and 18% permanent partial disability of his left upper extremity at the 175 week level plus 15% additional disability for multiplicity.

The employer-insurer is therefore directed to pay to the employee 31.5 weeks of permanent partial disability for each wrist plus an additional 9.45 weeks of permanent partial disability for multiplicity, for a total of 72.45 weeks. At the rate of \$317.84 per week, the total awarded for permanent partial disability equal to \$23,027.51.

In addition to the permanent partial disability awarded, the employee is also entitled to an award for disfigurement based on the scars to her right and left wrists. After reviewing the medical records and observing the scars at the hearing, I find that the employee is entitled to one week of disfigurement for the scar to her left wrist and one week of disfigurement for the scar to her right wrist. The employer is therefore directed to pay to the employee the sum of \$635.68 for two weeks of disfigurement.

The total amount awarded for permanent partial disability, temporary total disability, and disfigurement is equal to \$25,570.20.

ATTORNEY'S FEE:

Thomas P O'Driscoll, attorney at law, is allowed a fee of 25% of all sums awarded under the provisions of this award for necessary legal services rendered to the employee. The amount of this attorney's fee shall constitute a lien on the compensation awarded herein.

INTEREST:

Interest on all sums awarded hereunder shall be paid as provided by law.

Made by:

Carl Strange
Administrative Law Judge
Division of Workers' Compensation

Date: _____

A true copy: Attest:

Ms. Naomi Pearson