

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

Injury No.: 03-086962

Employee: Teresa Douglas
Employer: Image Design Group, Inc.
Insurer: Missouri Merchants & Manufacturing Association
Date of Accident: January 1, 2003
Place and County of Accident: Jefferson County, Missouri

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 Act. Pursuant to section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated April 21, 2006. The award and decision of Administrative Law Judge Koren M. Mueller, issued April 21, 2006, 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 25th day of July 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Teresa Douglas

Injury No. 03-086962

Dependents: N/A

Employer: Image Design Group, Inc.

Additional Party:N/A

Insurer: Missouri Merchants & Manufacturing Association

Hearing Date: January 26, 2006, formally submitted February 23, 2006 Checked by: KMM/bb for In

Before the
**DIVISION OF WORKERS'
COMPENSATION**
Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
2. Was the injury or occupational disease compensable under Chapter 287? Yes
3. Was there an accident or incident of occupational disease under the Law? Yes
4. Date of accident or onset of occupational disease: January 1, 2003
5. State location where accident occurred or occupational disease was 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
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:
Employee worked a trimmer on assembly line performing repetitive 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: right and left wrists
14. Nature and extent of any permanent disability: 22.5% permanent partial disability referable to the right wrist; 22.5% permanent partial disability referable to the left wrist, and 15% load.
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$2,049.00
17. Value necessary medical aid not furnished by employer/insurer? \$7,824.40
18. Employee's average weekly wages: \$260.00
19. Weekly compensation rate: \$173.34
20. Method wages computation: by agreement

COMPENSATION PAYABLE

21. Amount of compensation payable:

Unpaid medical expenses: \$ 7,824.40

7 4/7 weeks of temporary total disability (or temporary partial disability). \$ 1,312.42
90.57 weeks of permanent partial disability from Employer \$15,599.40

weeks of disfigurement from Employer

Permanent total disability benefits from Employer beginning , for
Claimant's lifetime

22. Second Injury Fund liability: Yes No X Open

TOTAL: \$24,836.22

23. Future requirements awarded: None

Said payments to begin as of the date of this Award 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 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

Michael C. Goldberg

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Teresa Douglas

Injury No: 03-086962

Before the
**DIVISION OF WORKERS'
COMPENSATION**

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

Dependents: N/A

Employer: Image Design Group, Inc.

Additional Party N/A

Insurer: Missouri Merchants & Manufacturing Association

Checked by: KMM/bb for ln

PRELIMIARIES

A final hearing was held on the above-referenced claim in the St. Charles Division of Workers' Compensation office on

January 26, 2006. Post-hearing briefs were received and the case was formally submitted on February 23, 2006. Michael C. Goldberg represented Teresa Douglas (hereinafter "Claimant"). Marylou Calzaretta represented Image Design Group, Inc. (hereinafter "Employer") and their insurer. Claimant appeared and was the only live witness to testify. Mr. Goldberg requested an attorney fee of 25% of all benefits awarded.

The parties stipulated that on or about January 1, 2003 Claimant was in the employment of Employer working in Jefferson County, Missouri. The parties agreed to venue the hearing in St. Charles County for the convenience of the parties. The parties further stipulated that Employer and Claimant were operating under the provisions of the Missouri Workers' Compensation Law and that Employer had notice of the injury and a claim for compensation was filed within the time prescribed by law. The parties further stipulated that Claimant's average weekly wage was \$260.00 and the rates for temporary total disability and permanent partial disability was \$173.34. Employer provided medical aid in the amount of \$2049.00.

The parties stipulated and agreed that the following issues are to be resolved:

1. Occupational disease
2. Medical causation
3. Liability for \$7824.40 in past medical expenses
4. Nature and extent of temporary total disability for the weeks of January 22, 2004 through March 15, 2004 totaling 7 4/7 weeks
5. Nature and extent of permanent partial disability

EXHIBITS

Claimant offered the following exhibits, which were admitted into evidence without objection:

Exh. A: Dr. Bruce Schlafly medical records

Exh. B: Jefferson County Internal Medicine medical records

Exh. C: Jefferson Memorial Hospital medical bills

Exh. D: Dr. Bruce Schlafly deposition taken December 29, 2004

Employer offered the following exhibit, which was admitted into evidence without objection:

Exh. 1: Dr. Henry Ollinger deposition taken March 9, 2005

The parties offered the following joint exhibits, which were admitted into evidence without objection:

Joint Exh. I: The Work Center ergonomic study

Joint Exh. II: Task Analysis Report

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the substantial and credible evidence, as well as the applicable law I find the following:

Only the evidence necessary to support this award has been summarized. Any objections not expressly ruled on in this award are overruled. Claimant testified she was hired by Employer in approximately October of 2002 as a trimmer. Her job as a trimmer consisted of a number of activities performed with both her right and left hands. Claimant testified she is right hand dominant. She worked on an assembly line finishing various products with custom company logos embroidered on each product. The products included t-shirts, polo shirts, sweat shirts, jackets and fleece. She pulled bundles of twelve products off a machine and worked on one garment at a time. She placed the garment on a table and used scissors to cut the excess backing around the embroidered logo. She used tweezer-like snips to cut extra threads between each letter of the embroidery. She also used a spray bottle to spray the embroidery and then tear off the scrap solvy from the embroidery. She held the backing on the garment with her left hand while she snipped with the right hand and pulled off the solvy with her right hand. She also held the spray bottle with her left hand while working with her right hand. Once the garment was completed she had to fold the products in a certain manner, bag the products, tag them and box them with boxes she had

built.

Claimant indicated she worked ten hours per day, at least four days per week with overtime required. She had a thirty-minute lunch and two ten-minute breaks each day. She estimated it took approximately twenty minutes to complete twelve shirts. She noted that if the material was fleece the job was more difficult and may take more time to complete because it was more difficult to use the scissors. She also had to thread the needle on the sewing machine. She estimated she completed 300-500 shirts per day.

Claimant agreed that the Task Analysis Report, marked as Joint Exhibit II, was consistent with her job duties at Employer. She testified she constantly used her hands at work unless she was on break. The Work Center Ergonomic Job Study, marked as Joint Exhibit I, concluded that a cycle of twelve shirts per cycle consisted of approximately 300 hand movements per cycle per trimmer. This equated to approximately 7500-9000 upper extremity movements per trimmer per shift. Tool hand movements listed a medium, steady motion with approximately 144 hand movements per cycle for both the right and left upper extremities.

Claimant testified that she began noticing tingling, numbness and tenderness in both wrists within a couple of months of working for Employer. She continued to perform her job duties with problems. Her hands progressively became worse until she was seen by her own physician, Dr. Patel. Dr. Patel recommended Naproxyn for four weeks, which did not help, and he then recommended a nerve conduction study. The study was performed at Jefferson Memorial Hospital on March 25, 2003 and demonstrated bilateral median entrapment. Dr. Patel diagnosed carpal tunnel syndrome and indicated to Claimant that it was related to her job. Claimant then notified her Employer of the condition.

Employer sent Claimant to Dr. Ollinger for an evaluation on June 5, 2003. Dr. Ollinger examined Claimant and opined that Claimant had carpal tunnel syndrome and that it's cause was idiopathic. He noted that Claimant had risk factors of female and over 40 years of age. Claimant testified he did not review any records with her, did not ask for the results of any testing performed and did not ask for a job description. Claimant then received a letter stating that her carpal tunnel syndrome was not work-related.

Claimant then sought treatment on her own and Dr. Patel referred her to Dr. Schlafly. She provided information to Dr. Schlafly and was examined by Dr. Schlafly on June 26, 2003. Dr. Schlafly confirmed the diagnosis of carpal tunnel syndrome. He performed a right carpal tunnel release and excision of a ganglion on January 22, 2004. He performed a left carpal tunnel release on February 12, 2004. Claimant testified the surgeries relieved the numbness in her hands and Dr. Schlafly released her on March 15, 2004. When she was released she noticed her hands tired easily, she continued to have weakness and some tenderness. She returned to Employer after her release and continued there as a trimmer until May of 2005. She left Employer when they moved their facility to St. Louis from Desoto. She sought and found a position that did not require her to use her hands repetitively. Her complaints at the time of hearing included continued tenderness, weakness, significant loss of grip strength and difficulty opening jars. She testified that she did not have hobbies such as crochet, guitar or computer work. She takes over the counter medications at times if her hands are tender.

Claimant testified that prior to working for Employer she did not have any complaints in her hands and worked for Head Start. At Head Start she was an assistant cook and did not repetitively use her hands. On cross-examination Claimant testified that she returned to her full-time job as trimmer without restrictions after Dr. Schlafly's release.

Dr. Ollinger testified by deposition on Employer's behalf. He testified that at the time of his examination on June 5, 2003 he had none of Claimant's medical records to review and had no job analysis documentation to review. He relied on the history Claimant provided. He noted Claimant was in good health and listed two diagnoses or impressions after his examination of Claimant: the first that she was a 43 year old female and second, that she presented with bilateral carpal tunnel syndrome. He noted there were no other medical conditions such as thyroid disease, pregnancy or other medical conditions that were risk factors in this case. He testified it was his opinion that Claimant had idiopathic carpal tunnel syndrome consequent to the risk factors of her age and gender. He testified that her work was not a proximate cause or substantial factor for the development of carpal tunnel syndrome. He testified that this conclusion was based upon the time line of the symptom onset. He testified Claimant was employed for about a month when she developed bilateral symptoms simultaneously. He testified Claimant's job was fast and repetitive by her description and involved the right hand as a potential exposure. He testified that by her report, her left hand did not do much at work. He concluded that work was not a factor in the cause of her bilateral carpal tunnel syndrome because the left hand had no exposure "...to work experience at that place in one month." (ER's Exh. 1, p. 12). Dr. Ollinger testified he could not identify with any degree of medical certainty what caused Claimant's carpal tunnel syndrome, but he could state with medical certainty that work was not a significant factor in the development of Claimant's carpal tunnel syndrome.

Dr. Ollinger testified he later received, after discussion with Employer's insurance representative, an ergonomics analysis from The Work Center dated July 7, 2003 and a second Task Analysis Report completed by BJC dated July 24, 2003. Dr. Ollinger testified that the receipt of this information did not alter his initial opinion regarding causation.

Dr. Bruce Schlafly testified by deposition on Claimant's behalf. Dr. Schlafly examined Claimant initially on September 26, 2003. Dr. Schlafly diagnosed bilateral carpal tunnel syndrome and recommended surgery. He performed a right carpal tunnel release and excision of a ganglion on January 22, 2004 and a left carpal tunnel release on February 12, 2004. Dr. Schlafly kept Claimant off work from January 22, 2004 until March 14, 2004. Dr. Schlafly took a history from Claimant and reviewed Claimant's medical records and tests results, the July 24, 2003 Task Analysis Report, Dr. Ollinger's reports and testified that in his opinion within a reasonable degree of certainty the cause of Claimant's bilateral carpal tunnel syndrome was the repetitive work at Employer. Dr. Schlafly opined that Claimant's work for Employer was a substantial factor in the development of Claimant's bilateral carpal tunnel syndrome.

Dr. Schlafly noted that the charges related to the treatment for Claimant's bilateral carpal tunnel syndrome was reasonable and customary. He also testified that the surgeries were needed to cure and relieve the effects of Claimant's condition. Dr. Schlafly testified that he noted Claimant had surgical scars from her releases. Claimant had grip strength of 28 pounds in her right hand and 24 pounds in her left. Claimant had a mildly positive Tinel's Sign on both wrists and a mildly positive Phalen's Sign on both wrists. He testified that these signs were indicative of some residual median nerve irritation. Dr. Schlafly assigned 22.5% permanent partial disability of each hand and noted there was a synergistic effect of these conditions with the right and left hands.

Issues relating to occupational disease and medical causation

Claimant alleges that her work at Employer exposed her to repetitive work and was a significant factor in the development of her bilateral carpal tunnel syndrome. Employer argues that the Claimant's work as a trimmer was not the type of work that would expose Claimant to conditions that would lead to the development of bilateral carpal tunnel syndrome and that the cause is idiopathic. Section 287.067.2 RSMo (2000) provides that an occupational disease is compensable if it is clearly work related and meets the requirements of an injury, which is compensable as provided in subsections 2 and 3 of section 287.020 RSMo (2000). Section 287.020.2 RSMo (2000) provides, in part, that "An injury is compensable if it is clearly work related. An injury is clearly work related if work was a substantial factor in the cause of the resulting medical condition or disability." Claimant has the burden of establishing a link between her job and her occupational disease. Smith v. Tiger Coaches, 73 S.W.3d 756 (Mo.App. 2002). Determinations of this kind require the assistance of expert medical testimony. Medical causation not within lay understanding or experience requires expert medical testimony. Wright v. Sports Associated, Inc., 887 S.W.2d 596, 600 (Mo.banc 1994). When medical theories conflict, deciding which to accept is an issue reserved for determination of the fact finder. Hawkins v. Emerson Electric Co., 676 S.W.2d 872, 877 (Mo.App. 1984). In this case both experts agree that Claimant developed carpal tunnel syndrome. The disagreement centers on whether Claimant's work at Employer was a significant factor in the development of her bilateral carpal tunnel syndrome.

Claimant testified credibly that her problems with both hands began within a few months of beginning employment with Employer. Her description of her job duties was verified by the two job analysis reports that were obtained by Employer. Dr. Patel, Claimant's initial treating physician believed that Claimant's condition was work related and advised Claimant to report this occurrence to her Employer. Dr. Schlafly examined Claimant and performed each surgical release. Claimant's work involved extensive use of her hands repetitively for at least ten hours each day. Dr. Schlafly concluded that Claimant's condition was work related after he reviewed all of the information available regarding the issue.

Dr. Ollinger examined Claimant once with no other information available and issued an opinion that the etiology of Claimant's condition was idiopathic, with risk factors of age and gender. He did not review the nerve conduction studies or obtain any job description or study before reaching this conclusion. After concluding that work was not a substantial factor in the development of Claimant's bilateral carpal tunnel syndrome, Dr. Ollinger testified he discussed the need for a job task analysis with an insurance representative in anticipation of the need to support his opinion at some later date. (ER Exh. 1 pp. 43-47). Dr. Ollinger admitted Claimant was not obese, did not have a thyroid condition, pregnancy or any other medical condition that may be a risk factor for the development of carpal tunnel syndrome. Dr. Ollinger appears to place significant importance on the fact that Claimant's symptoms developed simultaneously in both her right and left hands because he believed that her left hand was not exposed to repetitive work. He testified that he was unsure of the cause of her bilateral carpal tunnel syndrome but knew it was not related to work.

Based upon all the credible evidence I find that Dr. Schlafly's opinion regarding exposure and medical causation is based upon the more complete information available and is persuasive. Therefore, I find that Claimant's work at Employer is a

substantial factor in the development of her bilateral carpal tunnel syndrome and need for the bilateral carpal tunnel releases and related treatment. In accordance with Dr. Schlafly's opinion, I do not find that Claimant's right wrist ganglion is related to work.

Issues relating to past medical expenses

Where an employer has notice of an accident or an illness and fails to provide medical care, the employer will be responsible for medical bills if they are incurred for treatment related to that accident and if the bills are fair and reasonable. Emert v. Ford Motor Co., 863 S.W.2d 629 (Mo.App. 1993). A sufficient factual basis exists to award payment of medical expenses when medical bills and supporting medical records are introduced into evidence supported by testimony that the expenses were incurred in connection with treatment of a compensable injury. Martin v. Mid-America Farm Lines, Inc., 769 S.W.2d 105 (Mo.banc 1989). Claimant seeks payment of \$7824.40 and the parties stipulated to this amount and the medical bills. Claimant testified that these bills were related to the treatment of her bilateral hand condition. Dr. Schlafly testified that Claimant's treatment was necessary and that the medical charges for her treatment were reasonable and customary. Therefore there is sufficient evidence to find Employer liable for payment of \$7824.40 in past medical expenses.

Issues relating to temporary total disability

The parties stipulated that the total number of weeks of temporary total disability at issue in this case is 7 4/7 weeks. Temporary total disability (TTD) benefits are intended to cover a period of time from injury until such time as claimant can return to work. Phelps v. Jeff Wolk Construction Co., 803 S.W.2d 641 (Mo.App. 1991). Claimant testified that she was off work after her carpal tunnel surgeries from January 22, 2004 through March 15, 2004. Dr. Schlafly testified he kept Claimant off work for the same time period. The parties agreed and stipulated to a TTD rate of \$173.34 per week. Therefore I find Employer is liable for payment of 7 4/7 weeks of TTD at \$173.34 for a total of \$1312.42 in TTD benefits.

Issues relating to permanent partial disability

A permanent partial award is intended to cover claimant's permanent limitations due to a work related injury and any restrictions his limitations may impose on employment opportunities. Phelps v. Jeff Wolk Construction Co., 803 S.W.2d 641, 646 (Mo.App. 1991). As a result of her work related medical condition and subsequent surgeries Claimant testified she has continuing pain, weakness and fatigue in her right and left wrist. Claimant testified she sought employment with less repetitive hand activity. Dr. Schlafly determined Claimant had 22.5% permanent partial disability (PPD) in each wrist and there was a synergistic effect because of the bilateral hand condition. There was no other disability opinion introduced into evidence.

With respect to the degree of permanent partial disability, a determination of the specific amount of percentage of disability is within the special province of the finder of fact. Banner Iron Works v. Mordis, 663 S.W.2d 770, 773 (Mo.App. 1983). After reviewing all the evidence submitted including Claimant's complaints regarding the nature and extent of disability in her wrists, I find that Claimant suffers from 22.5% permanent partial disability of her right and left wrists and a 15% load is applicable due to the synergistic effect of her condition for which Employer is liable. The parties agreed and stipulated to a permanent partial disability rate of \$173.34. The total number of weeks of PPD is 90.57 at a PPD rate of \$173.34 for a total of \$15,699.40 due from Employer.

This award is subject to a lien in favor of Michael C. Goldberg, Attorney at Law, in the amount of 25% thereof for necessary legal services rendered.

CONCLUSION

In summary, Employer is liable for payment of 22.5% permanent partial disability of her right wrist and 22.5% permanent partial disability of her left wrist with a 15% load at a rate of \$173.34 for a total of \$15,699.40, Employer is also liable for payment of 7 4/7 weeks of TTD for a total of \$1312.42 and Employer is liable for payment of \$7824.40 in past medical expenses. Employer is liable for payment of a total of \$24,836.22 to Claimant. This award is subject to the attorney lien referenced above.

This award is subject to interest as provided by law.

KOREN M. MUELLER
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/ PATRICIA "PAT" SECREST
PATRICIA "PAT" SECREST
Director
Division of Workers' Compensation