

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

Injury No.: 03-088888

Employee: Imogene Dwyer
Employer: American Airlines
Insurer: American Home Assurance Company
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 § 287.480 RSMo.¹ Having reviewed the evidence, read the briefs, and considered the whole record, the Commission finds that the award of the administrative law judge (ALJ) is supported by competent and substantial evidence and was made in accordance with the Missouri Workers' Compensation Law. Pursuant to § 286.090 RSMo, the Commission affirms the award and decision of the ALJ dated June 21, 2012, as supplemented herein.

Employee argues on appeal that the ALJ erred in finding that employee's bilateral carpal and cubital syndromes were not medically caused by her work activities at American Airlines (employer). In support of this argument, employee points to the medical opinions of Dr. Schlafly, who opined that employee's repetitive work with her hands and upper extremities at employer is the prevailing factor in causing her bilateral carpal and cubital tunnel syndromes.

As indicated by the ALJ, Drs. Kramer, Ollinger, and Strecker all disagree with Dr. Schlafly's assessment and opined that employee's bilateral carpal and cubital tunnel syndromes were not related to her work.

"Medical causation, not within the common knowledge or experience, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause." *Brundige v. Boehringer Ingelheim*, 812 S.W.2d 200, 202 (Mo. App. 1991). Where the opinions of medical experts are in conflict, the fact-finding body determines whose opinion is most credible. *Hawkins v. Emerson Electric, Co.*, 676 S.W.2d 872, 877 (Mo. App. 1984).

We find, based upon the record as a whole, that the medical causation opinions of Drs. Kramer, Ollinger, and Strecker are more credible than Dr. Schlafly's. Therefore, we affirm the ALJ's decision to deny employee's claims against employer and the Second Injury Fund.

¹ Statutory references are to the Revised Statutes of Missouri 2002 unless otherwise indicated.

Employee: Imogene Dwyer

- 2 -

Award

The Commission affirms the award and decision of the ALJ, as supplemented herein.

The award and decision of Administrative Law Judge Kathleen M. Hart, issued June 21, 2012, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 4th day of February 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T

Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Imogene Dwyer

Injury No.: 03-088888

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: American Airlines

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

Additional Party: Second Injury Fund (SIF)

Insurer: American Home Assurance c/o SRS

Hearing Date: April 5, 2012

Checked by: KMH

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 January 25, 2003
5. State location where accident occurred or occupational disease was contracted: St. Louis
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 she developed bilateral carpal tunnel and bilateral cubital tunnel syndromes as a result of 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: 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? None

Employee: Imogene Dwyer

Injury No.: 03-088888

- 17. Value necessary medical aid not furnished by employer/insurer? None
- 18. Employee's average weekly wages: unknown
- 19. Weekly compensation rate: \$583.73/\$340.12
- 20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable: None

22. Second Injury Fund liability: No

TOTAL: NONE

23. Future requirements awarded: None

Said payments to begin immediately 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 n/a of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant:

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Imogene Dwyer

Injury No.: 03-088888

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: American Airlines

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

Additional Party: Second Injury Fund (SIF)

Insurer: American Home Assurance c/o SRS

Checked by: KMH

A hearing was held on the above captioned matter April 5, 2012. Imogene Dwyer (Claimant) was represented by attorney John Healy. American Airlines (Employer) was represented by attorney Ben Shelledy. The SIF was represented by Assistant Attorney General Da-Niel Cunningham.

All objections not expressly ruled on in this award are overruled to the extent they conflict with this award.

Claimant alleges she developed bilateral carpal tunnel and bilateral cubital tunnel syndromes as a result of repetitive work on or about January 25, 2003.

STIPULATIONS

The parties stipulated to the following:

1. Employer and Claimant were operating under the provisions of the Missouri workers' compensation law on the alleged date of injury.
2. Employer's liability was fully insured by American Home Assurance.
3. Employer had notice of the alleged injury and a claim for compensation was timely filed.
4. Claimant's average weekly wage yields a TTD rate of \$583.73 and PPD rate of \$340.12.
5. Employer has paid no benefits to date.

ISSUES

The parties stipulated the issues to be resolved are as follows:

1. Occupational disease
2. Medical Causation
3. Liability for past medical expenses
4. Future medical care

5. TTD
6. PPD
7. SIF liability

FINDINGS OF FACT

Based on the competent and substantial evidence, my observations of Claimant at trial, and the reasonable inferences to be drawn therefrom, I find:

1. Claimant is a 69 year-old female flight attendant. She has worked for Employer since 1967. She began in reservations, and her duties involved a lot of typing. She also checked in passengers, wrote tickets, worked as a gate agent, and lifted heavy luggage. She began working as a flight attendant in 1986. Her work as a flight attendant was physically demanding. She frequently lifted luggage overhead, delivered meals to passengers, and operated the bar cart. The bar cart weighed approximately 300 pounds, and generally two employees worked the cart. Claimant testified she often worked several flights per day, and handled 5-7 drink services a day.
2. Claimant injured her right shoulder November 6, 2002, when she tripped over a passenger's bag while pulling the bar cart. She treated with Dr. Kramer who performed an arthroscopic decompression and open repair of Claimant's right rotator cuff in January 2003. She had follow-up treatment and physical therapy, and Dr. Kramer sent her for a functional capacity evaluation (FCE) in September 2003. The FCE showed Claimant was only able to do light work.
3. Claimant was furloughed November 9, 2002, and did not return to work for Employer for several years.
4. In April 2003, Claimant told Dr. Kramer she developed numbness and tingling in her right fourth and fifth fingers while driving with her right arm on the armrest. Claimant testified she had intermittent symptoms of this in the past, but she thought they were normal. She testified her complaints began in the 1980s, and increased after her shoulder surgery. Dr. Kramer opined this condition was not work related and recommended Claimant see her internist.
5. In June 2003, Employer sent Claimant to Dr. Ollinger. He noted Claimant's symptoms in her right arm started in late 2002 and worsened to involve constant tingling and numbness from her elbow to her hand by the time of his examination. She had no left arm complaints. He noted she had osteoarthritis in her fingers and thumbs. He sent her to Dr. Phillips for electrical studies, which showed chronic moderate right median neuropathy and mild left median neuropathy. They also showed chronic mild ulnar neuropathies across the cubital tunnels. This was the first time Claimant was diagnosed with carpal tunnel syndrome or cubital tunnel syndrome.
6. Dr. Ollinger opined the only area that currently required treatment was the right elbow. He opined Claimant's bilateral ulnar and median neuropathies do not relate to her work as

a flight attendant or to her 2002 shoulder injury. He noted each of the four areas have evidence of chronicity. Dr. Ollinger opined Claimant had no medical risk factors for the development of compressive neuropathies, but her age and gender are risk factors.

7. Claimant testified she sought treatment on her own. She talked to some lawyers and doctors, and they recommended Dr. Schlafly. He performed a left carpal tunnel release with anterior transposition of the ulnar nerve at the left elbow in May 2004. He performed the same procedure on her right arm in January 2005. Claimant testified the surgeries relieved many of her symptoms. Claimant did not receive TTD benefits or salary while she was off work for her wrist and elbow surgeries.
8. Dr. Schlafly sent Claimant to physical therapy following her surgeries. In April 2005, he diagnosed severe osteoarthritis at the base of Claimant's thumbs. In December 2005, Dr. Schlafly found Claimant reached maximum medical improvement for her wrists and elbows, but he continued to treat the arthritis in her thumbs and long fingers.
9. In June 2010, Dr. Schlafly examined Claimant and issued a report. He noted Claimant had some popping and reduced range of motion in her right shoulder. She had good range of motion in her wrists, and had multiple arthritic joints in both hands. He opined the work injury in November 2002 was the prevailing factor in causing her shoulder condition and rated her disability at 35% of the shoulder. He opined her repetitive work with her hands and upper extremities is the prevailing factor in causing her bilateral carpal tunnel and cubital tunnel syndromes and rated her disability at 25% of each hand and 25% of each elbow. He recommended Claimant follow a 20 pound lifting restriction when using both hands and perform no repetitive overhead reaching or lifting with her right arm and shoulder.
10. Dr. Strecker examined Claimant in June 2006 and July 2009 at the request of Employer. In 2006, he noted Claimant had occasional night pain and paresthesias in her arms before her shoulder injury, but her complaints increased shortly after her shoulder surgery. He reviewed Claimant's current complaints. The remainder of his report is not included in the deposition exhibit. In his 2009 report, he noted Claimant's right shoulder complaints had not changed. She continued to have numbness and tingling in her arms. She was still seeing Dr. Schlafly for her thumb, and he had recommended a fusion in her left thumb.
11. Dr. Strecker opined Claimant's wrist and elbow conditions were not caused by her fall at work in 2002 given the time from her fall to the time she developed bilateral arm complaints. Her conditions were not caused by her work activities as a flight attendant because she had no prolonged periods of abnormal joint positioning, and she did not use any vibratory tools. Repetitive activities with a significant amount of force can lead to a higher incidence of carpal tunnel or cubital tunnel than the general population, but there is no medical evidence that links the duties of a flight attendant to causing either condition.
12. Claimant continues to have pain in her wrists and shoulders. Her pain increases with lifting. She testified Dr. Schlafly's treatment helped considerably and her pain has improved since the surgeries.

13. Since she was furloughed in 2002, Employer made many changes, and the duties of a flight attendant are less physical. Claimant passed Employer's physical and was able to return to work last year. She is currently on medical leave from Employer, unrelated to these claims.
14. Claimant feels she did wrist and hand intensive work the entire time she worked for Employer, and well before her hand complaints began. She testified before 2003, at least 80% of her duties were hand intensive. Claimant testified none of her siblings have had carpal tunnel or cubital tunnel syndromes, and she has no activities in her personal life that are as strenuous as her work.
15. Claimant is credible.

RULINGS OF LAW

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented and the applicable law, I find the following:

1. Claimant's carpal tunnel and cubital tunnel syndromes were not occupationally induced and are not medically and causally related to her work.

Claimant alleges her duties as a flight attendant were repetitive and caused bilateral carpal tunnel syndrome and bilateral cubital tunnel syndrome.

In order to support a finding of occupational disease, employee must provide substantial and competent evidence that he/she has contracted an occupationally induced disease rather than an ordinary disease of life. The inquiry involves two considerations: (1) whether there was an exposure to the disease which was greater than or different from that which affects the public generally, and (2) whether there was a recognizable link between the disease and some distinctive feature of the employee's job which is common to all jobs of that sort.

Claimant must also establish, generally through expert testimony, the probability that the claimed occupational disease was caused by conditions in the work place. Claimant also must prove a direct causal connection between the conditions under which the work is performed and the occupational disease. The work conditions need not be the sole cause of the occupational disease, so long as they are a major contributing factor to the disease.

Kelley v. Banta & Stude Const. Co., Inc., 1 S.W.3d 43, 48 (Mo. App. 1999) (citations omitted).

I believe Claimant's job was physically demanding, but I am not convinced her work caused her wrist and elbow conditions. Claimant had intermittent hand and arm complaints while she was working. However, Claimant testified, and the medical records corroborate, her complaints increased after her shoulder surgery, when she was no longer working. Claimant began seeing Dr. Kramer in January 2003 for her 2002 shoulder injury. The first medical documentation of hand complaints was in April 2003, when Claimant told Dr. Kramer she had intermittent symptoms in the past, but had the onset of problems with her right arm the week before after driving with her right arm on the arm rest. This is five months after Claimant was furloughed and had not been exposed to the job stresses which she believes caused her conditions. Dr. Kramer opined her symptoms were not related to her work. Dr. Kramer treated Claimant through September 2003, and his medical records do not document any left arm complaints.

Dr. Ollinger saw Claimant in June 2003. His records indicate Claimant developed symptoms in her right arm after her right shoulder surgery January 20, 2003. She made no complaints of left arm symptoms to Dr. Ollinger. He ordered EMG/NCS which showed chronic neuropathies in her wrists and elbows. Based on these studies, Dr. Ollinger recommended treatment and opined only the right elbow needed treatment at that point, as it was the only symptomatic area. Based on her history and physical examination, Dr. Ollinger could not yet diagnose any conditions in her left arm. He opined her neuropathies did not relate to her work or to her shoulder injury.

Dr. Strecker notes Claimant had occasional night pain and paresthesias in her arms before the shoulder injury, but her symptoms increased after her shoulder surgery. He opined her arm complaints were not related to her shoulder injury. He noted she only had complaints to her right arm after her shoulder injury. The first bilateral complaints were a year and a half after her shoulder injury. He opined her arm complaints were not caused by her work because she had no prolonged periods of abnormal positioning, she did not use vibratory tools, and there is no medical evidence that links the duties of a flight attendant to causing either of her conditions.

I find Claimant has not established a link between her disease and her work. The overwhelming weight of the medical evidence establishes Claimant's bilateral carpal tunnel and cubital tunnel syndromes were not caused by her work.

CONCLUSION

Claimant has failed to establish her carpal tunnel and cubital tunnel syndromes were occupationally induced. As a result of this ruling, all remaining issues are moot. Employer is not responsible for Claimant's medical bills, or any PPD, TTD, or future medical. Her Second Injury Fund claim is hereby dismissed.

Made by: _____

KATHLEEN M. HART
Administrative Law Judge
Division of Workers' Compensation