

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

Injury No.: 10-031122

Employee: Nekesha Evans

Employer: Manpower

Insurer: Insurance Company of the State of Pennsylvania
c/o Sedgwick Claims Management Services

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. 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 § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated July 19, 2011, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Maureen Tilley, issued July 19, 2011, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 5th day of April 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

ISSUED BY DIVISION OF WORKERS' COMPENSATION

FINAL AWARD

Employee: Nekesha Evans Injury No. 10-031122
Dependents: N/A
Employer: Manpower
Additional Party: Second Injury Fund
Insurer: Sedgwick Claims Management Services
Hearing Date: April 19, 2011 Checked by: MT/rf

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? 4-1-2010
5. State location where alleged accident occurred or alleged occupational disease contracted:
New Madrid 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?
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: The employee alleged that she developed right hand carpal tunnel syndrome as a result of the work she performed.
12. Did accident or occupational disease cause death? No.
13. Parts of body allegedly injured by accident or occupational disease: Right hand.
14. Nature and extent of any permanent disability: None.
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: None.
18. Employee's average weekly wage: \$393.95
19. Weekly compensation rate: \$262.63
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 April 19, 2011, the Employee appeared along with her attorney, Kim A. Heckemeyer, for a Hearing for a Temporary Award. The employer appeared by its attorney, Amy L. Young. The Second injury Fund was left open and therefore they were not represented at this hearing. 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 a Summary of the Evidence and the Findings of Fact and Rulings of Law, are set forth below as follows:

UNDISPUTED FACTS:

1. That on April 1, 2010 the Employer, Manpower, was operating under and subject to the provisions of the Missouri Workers' Compensation Act.
2. That on April 1, 2010 Nekesha Evans was an employee of Manpower and was working under and subject to the Missouri Workers' Compensation Act.
3. That on April 1, 2010 Nekesha Evans sustained an accident or occupational disease during the course of employment at Manpower.
4. That the employer had notice of the employee's work injury that occurred on April 1, 2010.
5. That the employee's claim was filed within the time allowed by law.
6. That the average weekly wage for the injuries that occurred April 1, 2010 was \$393.95 and the rate of compensation for purposes of permanent partial and temporary total disability and permanent total disability is \$262.63.
7. That no medical aid has been furnished by the employer-insurer.
8. That if the claimant is found to be non-compensable then a Final Award will be issued.

ISSUES:

Several issues were identified.

1. Occupational Disease.
2. Medical Causation.
3. Future Medical Treatment.
4. Temporary Total Disability Benefits from April 28, 2010 through April 19, 2011 and on-going.

EXHIBITS:

Several Exhibits were offered and admitted into evidence:

Employee's Exhibits:

- A. Medical records.
- B. Report of Dr. Bruce Schlafly.
- C. Deposition of Dr. Bruce Schlafly.

Employer's Exhibits:

1. Medical records.
2. Hourly work records.

FINDINGS OF FACT:

Testimony of Nekesha Evans

Nekesha Evans, the employee testified that she was born in 1977 and is a single mother with two children, ages four and three. She attended high school through the 10th grade. She has a GED. She attended a technical college but did not obtain a certificate.

The employee's first job after high school was working for McDonalds in approximately 2001. She worked as a crew member for approximately one and a half years. In 2001 or 2002, she went to work for Plasteen, an automotive company performing assembly line work for approximately two years. In 2003, she went back to work at McDonalds as a shift manager for about two years. In 2005 or 2006, she went to work at Super 8 as a night auditor for approximately one year. Her job responsibilities involved closing down and making sure the money and the books were correct. She left her job at Super 8 because she became pregnant and she took a year off of work. Then, she went back to work at Super 8 on a part-time basis as a night auditor for approximately 20-30 hours per week. She testified that she was a "reliever" and worked the night shift for about one to two years. In 2009, she took a second part-time job as an inspector for Missouri Grain. This was a seasonal job and her hours varied. She worked anywhere from one to twelve hours per day and was paid an hourly rate of \$8 per hour. She eventually quit working for Super 8 because she believed her part-time job at Missouri Grain was a better job opportunity.

On March 10, 2010, the employee began working for Manpower, a temp agency. She was assigned to work at Siegal Roberts, a company that molds automotive parts. She was assigned to work up to ten or more different molding machines and she would, clip, trim, and roll parts, then pack them in boxes. She rotated machines on a daily basis and would find out which machine she was assigned to when she reported to work that day. She used three different tools: clippers to cut plastic, a knife for trimming, and a brass bar to "roll plastic down". She used the clipper and knife with her right hand. She is right handed. She used her left hand to hold the parts. Her hourly quota depended upon the machine she was using. She worked the 1:00 pm to 9:00 pm shift. She testified that she was scheduled to work anywhere from 40 to 50 hours per week. During the week she had two ten minute breaks per day and on the weekends she had fifteen minute breaks. She also had a lunch break.

She testified that she started off working on machines #17 and #18. These machines made molds for automobile grills, and she was required to trim, cut, and clip the parts and put them in plastic and pack them in a box or crate. These parts were made out of plastic. She did not recall how many parts she worked on per hour. She testified that the most difficult machine

she used was machine #23. She would get the part off the line, clip eight parts, and trim two parts. She testified the parts were made out of plastic. She testified that she is not good with measurements, but thought the parts were approximately one inch thick and the part was about as tall as her. She would put the part on the table and clip around it.

She testified that on the third day of working for Manpower her right hand swelled up and she experienced pain and numbness. She could not recall which machine she was working on at the time. She testified that she complained to the lead man at Siegal Roberts, but she did not report it to anyone at Manpower. She testified she reported symptoms a second time and was moved to a less difficult machine, #25. This machine made plastic emblems. She was required to clip and roll the parts, put plastic on it, and put it in a box. She testified that these parts did not require as much pressure as machine #23. She worked on this machine for one day. She testified her symptoms did not improve. She testified that all of her fingers hurt, but pain was worse in her thumb, index and middle fingers.

The employee testified that she was "let go" on April 28, 2010. Therefore, she worked for Manpower a total of 49 days. She stated that she had missed approximately three days of work during that time period. She testified that on April 28, 2010 she had to leave work for a migraine headache that was later diagnosed as a complex migraine. She called in to work to report what the doctor had told her and was informed that her assignment had ended. It was after she was "let go" that she asked a Human Resources representative at Manpower about treatment for her right hand. This was the first time she reported the symptoms to anyone at Manpower. She testified that had she not been let go that she could have continued to work.

Manpower sent Ms. Evans to Dr. Marsh for an evaluation. Dr. Marsh did not provide treatment. Manpower also sent her to Dr. Brown for a second opinion. She did not receive any treatment with Dr. Brown.

The employee testified that her symptoms have gotten worse since her employment with Manpower ended. She has been unemployed since her job assignment ended, and she has not looked for or applied for any other jobs. She has not sought any treatment on her own.

The employee is 5'1 tall and weighs approximately 220 pounds. She testified she weighed approximately 240 pounds at the time her symptoms began. The employee denied any hobbies or injuries outside of work. She testified that her symptoms interfere with her ability to tend to her housework and take care of her kids. She testified to difficulty holding and gripping things. She testified that on a pain scale of 1-10 her symptoms are past 10 if she overexerts herself. She testified it interferes with her ability to sleep. She denied any prior history of workers compensation claims. She denied any prior history of injury, symptoms, or treatment involving her right hand prior to working for Manpower. When questioned on cross-examination regarding a record from Pemiscot Memorial Hospital dated March 22, 2005 indicating an admitting diagnosis of right hand trauma, Ms. Evans denied any memory of the same.

The employee testified that she was diagnosed with hepatitis C in February of 2009. Her symptoms include flu-like symptoms, fatigue, and general achiness. She also has problems with anxiety and depression. She receives treatment from Dr. Arshad.

The employee was convicted of forgery in 2003 for writing and signing checks on her mother's checking account without her knowledge. She served time for four months in jail.

Summary of Timesheets

According to the timesheets, Ms. Evans' date of hire was March 10, 2011. In summary, the records show the following:

Week Ending	Hours worked
3/14/10	31.75
3/21/10	48
3/28/10	40
4/4/10	31.75
4/11/10	52
4/18/10	47.75
4/25/10	44.75
4/27/10	8.75

According to the time sheets, she only worked approximately 23.75 hours before noticing symptoms in her right hand.

Medical Records of Thomas Marsh, M.D.

The employee was evaluated by Dr. Marsh on April 30, 2010 for complaints of right hand numbness and tingling. He noted that she worked for Manpower between March 10, 2010 and April 28, 2010 and was released on April 28, 2010 for "non-attendance." He noted that the employee last worked on April 27, 2010 for about one and a half hours when she left work and was seen at Southeast Missouri Hospital Emergency Room for left arm, left hand, and left lower leg and toe numbness. The Southeast Missouri Emergency Room records are included in his records. According to these records, Ms. Evans was seen on April 27, 2010 with complaints of left-sided numbness and was diagnosed with a complex migraine. Dr. Marsh noted that there was no documentation of complaints of right upper extremity problems at that April 27, 2010 visit. Under the nursing assessment it is noted that she denied any paresthesias and her motor strength was strong and equal to all extremities.

The employee provided Dr. Marsh with a history of numbness in the tips of the thumb, index and middle finger of the right hand that began four days after she started working at Siegal Roberts. Dr. Marsh noted that the employee showed no specific tenderness to the carpal tunnel or medial lateral epicondyles in the right side and there was no gross swelling. On physical exam, he noted Tinel's testing was asymptomatic and that two point discrimination was intact throughout the entire right fingers, thumb through the fifth finger and neurosensory examination was intact to light touch and pinprick throughout the right hand to include the forearm and upper arms bilaterally. He documented that Phalen's testing was noted at 60 seconds and tingling sensation to the tips of the thumb, index and fifth finger.

Under his assessment, Dr. Marsh noted that Ms. Evans' hepatitis C has a "high potential of causing neuromuscular joint problems and distinct increased probability of developing even a carpal tunnel like presentation." In regard to causality, he noted "The current symptomology would not be classified as being 'work related'." He recommended she follow up with her primary care physician. He indicated she could return to work with no restrictions on April 30, 2010.

Testimony and Medical Report of David Brown, M.D.

Dr. David Brown evaluated the employee on July 13, 2010. Dr. Brown is a board certified surgeon and his practice specializes in both nonsurgical and surgical treatment of the hand, wrist, elbow and reconstructive microsurgery of the upper extremity. Dr. Brown obtained a job description from Ms. Evans that he outlined in his report. He noted that the employee told him she noticed symptoms of swelling and numbness after three days. Employee did not recall any specific injury and reported that she had noticed no improvement in her symptoms in spite of not working since April 27, 2010.

Dr. Brown testified that the employee's physical exam was essentially negative and that there was no clinical evidence of carpal tunnel syndrome. He explained that provocative testing for a compression neuropathy, such as carpal tunnel syndrome was negative and that she had normal sensation and range of motion. He explained that she does have symptoms consistent with carpal tunnel syndrome, but that an EMG/NCS would be necessary to make that diagnosis within a reasonable degree of medical certainty. He testified that the need for the nerve conduction study is not related to her employment. Dr. Brown opined that:

"I do not believe three days of work as she described it to me at Manpower would be considered the prevailing causative factor of a peripheral compression neuropathy such as carpal tunnel syndrome and/or cubital tunnel syndrome. The basis for this opinion is the very short duration of exposure to the work activities. The fact that she's had no improvement in her symptoms since being removed from those activities now since April is also inconsistent with the job duties being the prevailing causative factor of her current condition."

Dr. Brown testified that:

"three days of exposure or a total of about six weeks is the duration she worked there would be insufficient, in my opinion, to result in any permanent damage or trauma to the nerve. And furthermore, I would expect if that short duration of employment there of around six weeks was the primary cause of her problem, that her symptoms would have improved once she was removed from those activities, but they didn't."

Dr. Brown went on to explain that she has non-occupational risk factors for carpal tunnel syndrome including the fact that she is female and has an increased body mass index. He

testified that increased body mass index has been well-established in the medical and hand surgery literature as being associated with increased incidence of carpal tunnel syndrome and that studies in the Journal of Hand Surgery showed increased body mass index increases the risk of carpal tunnel syndrome four times. He testified on cross-examination that the employee's body mass index of 35 is considered to be "an increased BMI." On re-direct, he explained that:

"increased body mass index is thought to increase the interstitial pressure in the carpal tunnel or increase the pressure in the carpal tunnel. When you increase your pressure in your carpal tunnel that decreased blood flow to the nerve and causes ischemia. And it's that chronic ischemia of the nerve, decreased blood flow to the nerve over time that eventually affects how the nerve conducts an impulse and can cause fibrosis or scarring around the nerve and cause carpal tunnel syndrome. So the longer that nerve is exposed to that increased pressure it may be over many years, eventually it reaches a threshold where it affects the function of the nerve and the patient gets carpal tunnel syndrome."

Dr. Brown testified that he had an opportunity to review Dr. Schlafly's report and that it did not change any of his opinions. Specifically, in response to Dr. Schlafly's suggestion that one would expect Ms. Evans' symptoms to be bilateral in nature if related to increased body mass index or being female, Dr. Brown explained that a lot of female patients with increased body mass index do not have it bilaterally and it's no different that patients with hand intensive jobs that only develop symptoms in one hand.

Lastly, Dr. Brown opined that Ms. Evans is capable of working without restrictions. He disagreed with Dr. Schlafly's recommended restrictions. Dr. Brown stated these restrictions were not necessary. He also stated that if the employee were his patient, he would see no reason why she could not be working.

Medical Report of Bruce Schlafly, M.D.

The employee was evaluated by Dr. Bruce Schlafly on November 9, 2010. Dr. Schlafly noted that the employee told him she noticed swelling in her right hand on the first day of employment with Manpower.

On physical exam, Dr. Schlafly noted that Ms. Evans was 5'2 and weighed 235 pounds. The employee had no obvious swelling in her hands and wrists and displayed good range of motion. He noted a positive Tinel and Phalen's test for carpal tunnel syndrome of the right wrist. He documented pain with compression to the median nerve at the right wrist. On cross-examination, Dr. Schlafly acknowledged that the Phalen's, Tinel's and compression tests have a high subjective component.

Dr. Schlafly diagnosed right carpal tunnel syndrome and recommended a right carpal tunnel release. He opined that "her repetitive work with her right hand at the Siegel Roberts

Global factory, although of relatively short duration, is nevertheless the prevailing factor in the cause of her right carpal tunnel syndrome, and in the need for right carpal tunnel release.

On cross-examination, Dr. Schlafly acknowledged that “for the diagnosis of carpal tunnel syndrome that the only completely objective test is a nerve conduction study with an electrical measurement.” He testified that he often orders these tests to diagnose carpal tunnel syndrome, but in this case he made his diagnosis based on her history and physical exam. He testified that if his physical exam had been negative, he would not have recommended surgery, but instead would have suggested an EMG/NCS. He also testified that if there was a high degree of inconsistency on physical exam, that he would want an EMG/NCS to confirm the diagnosis.

Lastly, Dr. Schlafly recommended that “she should not perform work that requires repetitive lifting of greater than five pounds with the right hand alone or repetitive work such as cutting hard plastic with a clippers, using the right hand. On cross-examination, he testified that the employee could return to other types of work within the restrictions he recommended. For example, she could return to her previous work as a grain inspector, work at the front desk of a hotel, or certain types of retail or cashier work.

On cross-examination, Dr. Schlafly was asked about the causal relationship between Hepatitis C and carpal tunnel syndrome and he testified that it can be a cause of carpal tunnel syndrome.

Medical Records of Pemiscot Memorial Health Systems

According to these records, Ms. Evans was admitted to the hospital on March 22, 2005 with a diagnosis of right hand trauma. She had a negative x-ray of the right hand although it did show a “minimal medial deviation of the terminal phalangeal bone third finger . . . this may be residual from some previous injury.”

RULINGS OF LAW:

Issue 1. Medical causation.

The employee is alleging that the condition in her right hand began after only three days of working at her job. The employee denied prior symptoms or problems with her right hand, however there is a medical record from March 22, 2005 indicating a diagnosis of trauma to that hand that required an x-ray. Based on all of the evidence presented, I find that the employee was not a credible witness in this case.

Dr. Schlafly diagnosed right carpal tunnel syndrome and recommended a right carpal tunnel release. He opined that “her repetitive work with her right hand at the Siegel-Roberts Global factory, although of relatively short duration, is nevertheless the prevailing factor in the cause of her right carpal tunnel syndrome, and in the need for right carpal tunnel release.

On cross-examination, Dr. Schlafly acknowledged that “for the diagnosis of carpal tunnel syndrome that the only completely objective test is a nerve conduction study with an electrical measurement”. He testified that he often orders these tests to diagnose carpal tunnel syndrome, but in this case he made his diagnosis based on her history and physical exam.

It is important to note that Dr. Schlafly, in part, based his opinion on the employee’s opinion. However, as stated above, I find that the employee is not a credible witness.

The employee was also evaluated by Dr. Marsh and Dr. Brown.

Dr. Marsh opined that the employee’s hepatitis C has a “high potential of causing neuromuscular joint problems and distinct increased probability of developing even a carpal tunnel like presentation.” In regard to causality, he noted “The current symptomology would not be classified as being ‘work related’.” He recommended she follow up with her primary care physician. He indicated she could return to work with no restrictions on April 30, 2010.

Dr. Brown opined that he does not believe that three days of work would be the prevailing factor of a peripheral compression neuropathy such as carpal tunnel syndrome and/or cubital tunnel syndrome. He based this opinion on the short duration of work activities and the fact that employee did not have improvements in her symptoms since being removed (which is inconsistent with the job duties being the prevailing factor for her condition).

Based on all of the evidence presented, I find that Dr. Marsh and Dr. Brown’s opinions of medical causation are more credible than Dr. Schlafly’s opinion on the issue of medical causation. I further find that the employee failed to meet her burden of proof that her work was the prevailing factor in causing her right hand condition. Based on the denial of medical causation, the employee’s claim for compensation is denied.

Based on the denial of the claim, all other issues are moot and shall not be ruled upon. Furthermore, based on a denial of compensation in the primary case, the employee’s claim for compensation against the Second Injury Fund is denied.

Employee: Nekesha Evans

Injury No. 10-031122

Made by:

Maureen Tilley
Administrative Law Judge
Division of Workers' Compensation