

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

Injury No.: 06-053779

Employee: Julie Fink
Employer: Laclede Gas Company
Insurer: Laclede Gas Company

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 May 14, 2009. The award and decision of Administrative Law Judge Matthew D. Vacca, issued May 14, 2009, 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 3rd day of November 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Julie Fink Injury No.: 06-053779
Dependents: N/A Before the
Employer: Laclede Gas Company **Division of Workers'**
Compensation
Additional Party: N/A Department of Labor and Industrial
Relations of Missouri
Insurer: Laclede Gas Company Jefferson City, Missouri
Hearing Date: March 31, 2009 Checked by: MDV:cw

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?
4. Date of accident or onset of occupational disease: June 7, 2006
5. State location where accident occurred or occupational disease was contracted: St. Louis, City
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:
Developed carpal tunnel syndrome in performance of daily job duties, including typing.
12. Did accident or occupational disease cause death? No Date of death?
13. Part(s) of body injured by accident or occupational disease: Both upper extremities.
14. Nature and extent of any permanent disability: 25% each wrist, 15% hand and 4 weeks of disfigurement.
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-

Employee: Julie Fink

Injury No.: 06-053779

- 17. Employee's average weekly wages: -0-
- 18. Weekly compensation rate: \$609.60/\$365.08
- 19. Method wages computation: Agreed

COMPENSATION PAYABLE

20. Amount of compensation payable:

104.63 weeks of permanent partial disability from Employer	\$38196.50
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21. Second Injury Fund liability: No

TOTAL:	\$38,196.50
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22. Future requirements awarded: None

Said payments to begin 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: Amanda N. Murphy

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Julie Fink	Injury No: 06-053779
Dependents:	N/A	Before the Division of Workers' Compensation
Employer:	Laclede Gas Company	Department of Labor and Industrial Relations of Missouri
Additional Party:	N/A	Jefferson City, Missouri
Insurer:	Laclede Gas Company	Checked by: MDV:cw

ISSUES PRESENTED

The issues presented for resolution at the hearing were occupational disease, course and scope of employment, medical causation and the nature and extent of permanent partial disability.

FACTS

1. Claimant works for Laclede Gas Company, as a customer service representative. She began work for Laclede on December 6, 1996 and continued in that capacity until March 2006.
2. Claimant's duties include recording typed information via a keyboard while taking calls from customers. She spends 90-95% of her work day typing on the keyboard, and 5-10% of her time writing with a pen. She averages over 110 phone calls each day, each of which required constant keyboard use for the purpose of researching accounts, searching for information, making records of customer phone calls, typing and sending orders to various departments within the company. Claimant continuously used the keyboard over the course of an eight hour, forty-five minute day. She takes a one-hour lunch break and two fifteen minute breaks. Claimant also utilized a mouse and the number keypad on her standard keyboard. She manipulated the mouse with her right hand.
3. Claimant began experiencing throbbing, burning and weakness in her wrists, radiating up her arms while in the customer service position. The symptoms were the same in both arms, but were more severe in her right arm than her left arm.
4. In March, 2006, Claimant began a new position at Laclede Gas Company titled "Order Control." This position required typing, but not as much typing as her former customer service position.
5. Claimant first sought treatment with her primary doctor, Dr. Philip Conway, on June 23, 2005, where she complained of tingling of her hands up to her elbows. Dr. Conway referred Claimant to Dr. Robert Tucker at St. Louis Orthopedic Institute.
6. Claimant saw Dr. Tucker on July 26, 2005, who prescribed physical therapy. Claimant finished the physical therapy, but obtained no relief from her symptoms.
7. On June 2, 2006, Claimant sought a second opinion from Dr. Berni at St. Charles Orthopedic Associates, and described waking with numbness and tingling in her hands, as well as dropping things. Dr. Berni diagnosed Claimant with bilateral carpal tunnel syndrome, right more symptomatic than left, and recommended bilateral surgery.

8. Claimant reported the diagnosis of carpal tunnel syndrome to Marcia Shetley at Laclede Gas Company, and provided Ms. Shetley with a written report of injury on June 7, 2006. Ms. Shetley sent Claimant to Dr. Crandall at Aesthetic and Reconstructive Surgery Associates.
9. Dr. Crandall opined that Claimant's job was not the prevailing factor causing Claimant's hand symptoms, because Claimant did not type enough keystrokes each day. Dr. Crandall's opinion was based on an ergonomic job analysis report provided to him by Laclede Gas Company. Dr. Crandall did not discuss the actual amount of typing required by Claimant's job with Claimant. Dr. Crandall did not provide a diagnosis.
10. Dr. Crandall provided a supplemental report based on a video of Claimant on the job in her new order control position. Based on this video, Dr. Crandall opined that Claimant's typing speed would not cause problems such as carpal tunnel syndrome or tendonitis. Dr. Crandall did not view video of Claimant on the job in the position that she held when her symptoms began.
11. Claimant next sought treatment with Dr. Goldfarb at Washington University Orthopaedic Surgery due to worsening symptoms. An EMG showed bilateral carpal tunnel syndrome. After bilateral injections failed to alleviate her symptoms, Dr. Goldfarb performed right, then left carpal tunnel release surgery.
12. After her surgeries, Claimant's symptoms improved. Though she now lacks the throbbing pains, she continues to experience soreness in both wrists and weakness in both hands. She has trouble opening bottles. She experiences numbness in her left wrist near the incision site. She has minimal scarring on each wrist. Her ongoing symptoms are worsened by typing, which remains part of her job duties at Laclede Gas Company.
13. Claimant was evaluated by Dr. Poetz on October 8, 2007. Dr. Poetz opined that Claimant's job duties were the prevailing factor in causing bilateral carpal tunnel syndrome. Dr. Poetz based his opinion on Claimant's history of excessive and repetitive use of her upper extremities at work, and the lack of activities outside of work involving the excessive use of her upper extremities. Dr. Poetz disagreed with Dr. Crandall's opinion that a minimum number of keystrokes are required to cause carpal tunnel syndrome, and opined that patients must be evaluated as individuals.
14. Dr. Poetz rates Claimant at 40% permanent partial disability of the upper right extremity as measured at the wrist and hand, and at 35% permanent partial disability of the upper left extremity as measured at the wrist and hand.
15. Dr. Crandall disagreed with Claimant's carpal tunnel diagnosis pending further testing, and never provided a permanent partial disability rating.

RULINGS OF LAW

1. Claimant sustained an occupational disease which arose out of and in the course of her work at Laclede Gas Company. Claimant's hand-intensive work included excessive typing, and was the prevailing factor in causing carpal tunnel syndrome, which led to the need for surgery and permanent partial disability.
2. Claimant sustained a 25% permanent partial disability measured at the level of each wrist with a 15% factor to be applied for multiplicity of injuries and an additional 4 weeks for disfigurement.
3. Claimant was a credible witness, and testified in a direct, forthright manner. Claimant's testimony was believable.

DISCUSSION

Under Section 287.020.3(1) RSMo, "injury" is defined to be "an injury which has arisen out of and in the scope of employment." Under Section 287.067.2 RSMo, an "occupational disease" is "an identifiable disease arising with or without human fault out of and in the course of employment." Finally, "an injury due to repetitive motion is recognized as an occupational disease," and is compensable "only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability." § 287.067.3 RSMo. The claimant has the burden to prove that the occupational exposure was the prevailing factor in causing the resulting medical condition and disability.

OCCUPATIONAL DISEASE

Dr. Berni diagnosed the employee with bilateral carpal tunnel syndrome. Through EMG testing, Dr. Goldfarb confirmed that the employee had bilateral carpal tunnel syndrome, and performed surgery. Dr. Poetz agreed with this diagnosis. Dr. Crandall did not agree or disagree with the diagnosis, and set forth no alternative diagnosis. After reviewing all of the medical evidence, I find that the opinions of Dr. Berni, Dr. Goldfarb and Dr. Poetz are credible, and that the employee has carpal tunnel syndrome in each wrist.

COURSE AND SCOPE OF EMPLOYMENT/MEDICAL CAUSATION

The employee credibly testified that she worked at Laclede Gas Company for nine years in a customer service position that required excessive typing. She worked full time, and had no other hand intensive jobs or activities outside of her employ at Laclede Gas Company. Her symptoms began in 2005 while in the customer service position. The employer set forth no evidence disputing how much the employee typed in the customer service position. I find that the

Employee had a highly repetitive and hand intensive occupation involving her upper extremities, and did not participate in any such activities outside of work.

The focus of the employer's defense pertained to the employee's job duties in a different position, "order control." The employee began the order control position in March, 2006, which was approximately one year after her symptoms began. The employee testified that she typed far more in the customer service position than in the order control position. As such, I find that the video of the employee (Employer Exhibit 6), Janet Leich's testimony regarding keystroke counts and Keith Iborg's testimony regarding job duties all pertain to the order control position and are not accurate accounts of the employee's job duties in the position that she held when her symptoms began.

Dr. Poetz testified that the prevailing factor in the employee's diagnosis and disability was her hand intensive job at Laclede Gas Company.

Dr. Crandall testified that the employee's job was not the prevailing factor in causing the employee's hand symptoms. Dr. Crandall did not diagnose the employee's symptoms as any particular disease or condition due to the lack of objective testing. Without a diagnosis, Dr. Crandall opined that if the employee did have carpal tunnel syndrome, it could not be from her job at Laclede Gas Company. The employer did not send the employee for objective testing.

Dr. Crandall admitted that typing can cause carpal tunnel syndrome, but felt that the employee did not type enough keystrokes to reach the causation threshold. Dr. Crandall's opinion was based on an ergonomic job analysis report provided to him by Laclede Gas Company which purported to describe the job duties of the customer service position. He testified that he did not specifically ask the employee how often she typed or how often she was able to rest her wrists on the job. He believed that no one in a customer service position could ever get carpal tunnel syndrome from their job duties. This is ridiculous. Moreover, Dr. Crandall provided neither a diagnosis of employee's hand symptoms nor an alternative causation theory for her symptoms. Dr. Crandall's opinion has little weight as it is not based on Claimant's actual duties when the disease arose, but rather on her later position.

The employee's credible testimony that she typed almost constantly each day, full time, contradicts the keystroke numbers relied on by Dr. Crandall. Dr. Crandall's keystroke theory is not proven to be generally accepted in the medical community and never has been. His testimony regarding carpal tunnel syndrome has been held not credible in numerous worker's compensation cases and his theories rejected as not supported by medical science. And so it is here.

Dr. Poetz rejected keystroke guidelines as a means of determining causation, emphasizing the implausibility of obtaining an accurate and representative counts and the importance of evaluating patients as individuals. This is the method generally accepted in the medical community for determining the cause of Carpal Tunnel syndrome. In so doing, Dr. Poetz found that the employee had a hand intensive job requiring excessive and repetitive tasks, and that she engaged in no hand intensive activities outside of work.

After reviewing all of the medical causation evidence, I find that Dr. Poetz's opinion is more persuasive and more credible than the opinion of Dr. Crandall. I find that the employee sustained a compensable work-related occupational disease and injury that arose out of and in the course of her employment. I find that the employee's injury was caused by repetitive motion. I find that the employee's occupational exposure at Laclede Gas Company was the prevailing factor in causing the resulting medical condition, bilateral carpal tunnel syndrome, and her permanent partial disability.

Date: _____

Made by: _____

Matthew D. Vacca
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Division of Worker's Compensation