

FINAL AWARD DENYING COMPENSATION

Injury No.: 03-135218

Employee: Sandra Forbeck
Employer: Dollar Tree Stores, Inc.
Insurer: Zurich North America Insurance Company
Date of Accident: Alleged December 22, 2003
Place and County of Accident: Alleged Lincoln County

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, read the briefs, heard oral argument, 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 October 5, 2005, and awards no compensation in the above-captioned case.

We affirm the administrative law judge's conclusion that employee failed to sustain her burden of prove that her right hand carpal tunnel syndrome symptoms were caused by her activities as a cashier for employer.

The administrative law judge denominated the October 5, 2005, award as a Temporary or Partial Award. By order dated December 16, 2005, we concluded that the October 5, 2005 Temporary or Partial Award, was a final determination of the above-referenced claim. Accordingly, we issue this final award denying compensation.

The award and decision of Administrative Law Judge Hannelore D. Fischer, issued October 5, 2005, is attached and incorporated by this reference, except as re-denominated herein.

Given at Jefferson City, State of Missouri, this 3rd day of May 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

TEMPORARY OR PARTIAL AWARD

Employee: Sandra Forbeck

Injury No. 03-135218

Before the
**DIVISION OF WORKERS'
COMPENSATION**

Department of Labor and Industrial Relations of Missouri

Dependents:

Employer: Dollar Tree Stores, Inc.

Additional Party:

Insurer: Zurich North America Ins. Co.

Hearing Date: August 24, 2005

Checked by: HDF/cs

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No. Claimant failed to sustain her burden of proof that her carpal tunnel syndrome symptoms were work-related.
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?
4. Date of accident or onset of occupational disease:
5. State location where accident occurred or occupational disease contracted:
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?
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:
Alleged repetitive trauma.
12. Did accident or occupational disease cause death? No. Date of death?
N/a.
13. Parts of body injured by accident or occupational disease: Right hand.
14. Compensation paid to-date for temporary disability: None.
15. Value necessary medical aid paid to date by employer/insurer? None.
16. Value necessary medical aid not furnished by employer/insurer?

Employee: Sandra Forbeck

Injury No. 03-135218

17. Employee's average weekly wages:
18. Weekly compensation rate: \$78.38 ttd/\$148.00 ppd.
19. Method wages computation: By agreement.

COMPENSATION PAYABLE

20. Amount of compensation payable: None.

Unpaid medical expenses:

weeks of temporary total disability (or temporary partial disability)

TOTAL: -0-

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Sandra Forbeck

Injury No: 03-135218

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

Dependents:

Employer: Dollar Tree Stores, Inc.

Additional Party

Insurer: Zurich North America Ins. Co.

Checked by: HDF/cs

The above-referenced workers' compensation claim was heard before the undersigned administrative law judge on August 24, 2005. Memoranda were submitted by September 19, 2005.

The parties stipulated that on or about the 22nd day of December, 2003, the claimant was in the employment of Dollar Tree Stores, Inc.; the employer was operating under the provisions of the Missouri workers' compensation law; the employer's liability was insured by Zurich North America Insurance Company; the employer had notice of the injury and a claim for compensation was filed within the time prescribed by law; the rate of compensation on the date of the alleged occupational disease was \$78.38 per week for temporary total disability benefits, \$148.00 for permanent partial disability benefits; no temporary disability benefits have been paid to the claimant to date and no medical aid has been provided.

The issues to be resolved by hearing are 1) causation of occupational disease alleged, including whether the alleged occupational disease arose out of and in the course of employment, 2) the liability of the employer/insurer for past medical bills in the amount of \$223.00, 3) the liability of the employer/insurer for past temporary total disability benefits from December 22, 2003, forward, 4) the liability of the employer/insurer for further medical treatment and 5) the liability of the employer/insurer for further temporary total disability benefits.

The parties agreed that in the event of an award favorable to the claimant on the initial issue of causation, that the employer/insurer would be liable for the payment of past medical bills in the amount of \$223.00..

A temporary award is sought.

FINDINGS OF FACT

The claimant, Sandra Forbeck, was 54 years old as of the date of the hearing. Ms. Forbeck began working as a cashier at the Dollar Tree Stores, Inc., (Dollar Tree) in August of 2001. Ms. Forbeck last worked at Dollar Tree on December 22, 2003. When Ms. Forbeck left Dollar Tree, she had used a scanner at the cash register for approximately a year. Ms. Forbeck had other responsibilities other than her cashier work, including wrapping merchandise sold, stocking shelves and dusting or cleaning.

Ms. Forbeck began noticing complaints with her right middle, ring and small fingers approximately two weeks before she reported her complaints to her supervisor and was sent to St. Luke's Urgent Care on December 22, 2003. Ms. Forbeck's complaints were of numbness in the right thumb, middle, ring and small fingers with pain in the right wrist when she reported to St. Luke's Urgent Care. Ms. Forbeck continues to have pain, numbness and tingling in the right hand.

Ms. Forbeck's hours worked in the months prior to her injury are as follows:

Week ending December 27, 2003	10.48 hours
Week ending December 20, 2003	27.82 hours
Week ending December 13, 2003	17.38 hours
Week ending December 06, 2003	21.51 hours
Week ending November 29, 2003	10.32 hours
Week ending November 22, 2003	16.38 hours
Week ending November 15, 2003	17.88 hours
Week ending November 01, 2003	9.77 hours

Ms. Forbeck testified that most items that she handled weighed five pounds or less and that she usually worked a five-hour shift.

Dr. Henry Ollinger, M.D., testified by deposition that he is a board certified plastic surgeon specializing in hand and upper extremity work. Dr. Ollinger examined Ms. Forbeck on July 22, 2004, and found that Ms. Forbeck was a 52-year-old female with diabetes, morbid obesity, bilateral carpal tunnel syndrome, a left trigger thumb and an early diabetic stiff hand. Dr. Ollinger opined that Ms. Forbeck's employment was not a substantial factor in her carpal tunnel syndrome.

During cross-examination, Dr. Ollinger noted that Ms. Forbeck's payroll records reflect 27.82 hours of work during the week ending December 26, 2003, 17.38 hours the previous week and 21.51 hours the week before that.

Dr. Ollinger distinguished the effects of diabetes from carpal tunnel syndrome by describing diabetes as causing symptoms of pain, numbness or a burning type feeling in the feet or hands if there

is diabetic peripheral neuropathy from the symptoms of a localized compressive neuropathy causing symptoms in primarily the thumb, index and long fingers of the hand.

Dr. Ollinger testified that Ms. Forbeck suffers from carpal tunnel syndrome, not from diabetic peripheral neuropathy.

Dr. Ollinger stated that Ms. Forbeck's work of cashiering approximately 85 percent of the time during a 20-hour work week handling the smaller-weight purchases of about 20 people per hour by dragging the items purchased across a scanner is insufficient to cause her carpal tunnel syndrome. Dr. Ollinger stated that Ms. Forbeck's work at the Dollar Tree lacked the rate of repetitiveness and force, posture and contact to cause her carpal tunnel complaints.

Dr. James Walentynowicz, orthopaedic surgeon, testified by deposition that he saw Ms. Forbeck on May 28, 2004. Dr. Walentynowicz opined that Ms. Forbeck's work as a cashier for Dollar Tree was a substantial factor in causing Ms. Forbeck's right carpal tunnel syndrome. Dr. Walentynowicz testified during cross-examination that he had no information regarding the length of Ms. Forbeck's employment at Dollar Tree, how many days a week Ms. Forbeck worked as a cashier at Dollar Tree, what other job responsibilities Ms. Forbeck had at Dollar Tree or volume of business that she handled at Dollar Tree.

Ms. Forbeck's supervisor at Dollar Tree testified confirming Ms. Forbeck's testimony regarding hours worked and weight of items sold. The supervisor added that "drawer pulls" reflecting \$400.00 in sales (signifying 400 items at a \$1.00 apiece sold) were at least twice during one of Ms. Forbeck's shifts and could have been as many as four times a shift.

APPLICABLE LAW

An occupational disease is compensable if it is clearly work-related. An occupational disease is clearly work-related if work was a substantial factor in the cause of the resulting medical condition or disability. An occupational disease is not compensable merely because work was a triggering or precipitating factor. RSMo. 287.067(2). The claimant has the burden of proving the employment was a substantial factor in causing the condition. In this particular case, the claimant has failed to meet her burden of proof.

AWARD

The claimant, Sandra Forbeck, has failed to sustain her burden of proof that her right hand carpal tunnel syndrome symptoms were caused by her activities as a cashier for Dollar Tree. Both opining physicians, Dr. Walentynowicz and Dr. Ollinger, are highly-regarded orthopaedic surgeons. In this case, Dr. Ollinger's testimony that Ms. Forbeck suffers from carpal tunnel syndrome in her right hand unrelated to her employment is found most persuasive where he considered the specific type and duration of work performed by Ms. Forbeck at Dollar Tree and opined that it was insufficient to cause her carpal tunnel symptoms. Dr. Walentynowicz, on the other hand, opined with regard to Ms. Forbeck's condition of carpal tunnel syndrome versus diabetic neuropathy but had little knowledge regarding the work conditions which are alleged to have caused the carpal tunnel complaints and, therefore, did not opine with regard to causation with any specificity as to the work conditions allegedly causing the carpal tunnel syndrome.

All other issues raised for resolution are hereby rendered moot.

Date: October 5, 2005

Made by: /s/Hannelore D. Fischer
HANNELORE D. FISCHER
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

/s/Patricia "Pat" Secrest
Patricia "Pat" Secrest, Director

