Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

Injury No.: 04-148360

Employee: Stephen Garcia

Employer: Hussmann Corporation

Insurer: Indemnity Insurance Company of North America

Date of Accident: Alleged July 31, 2004

Place and County of Accident: St. Louis 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 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 November 21, 2006, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Cornelius T. Lane, issued November 21, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 29th day of June 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

_____
William F. Ringer, Chairman

_____
Alice A. Bartlett, Member

_____
John J. Hickey, Member

Attest:

_____
Secretary

AWARD

Employee: Stephen Garcia Injury No.: 04-148360

Dependents: N/A

Employer: Hussmann Corporation

Additional Party: N/A

Insurer: Indemnity Ins. Co. of North America

Hearing Date: September 28, 2006

Before the
Division of Workers' Compensation
Department of Labor and Industrial Relations of Missouri
Jefferson City, Missouri

Checked by: CTL:tr

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 July 31, 2004
5. State location where accident occurred or occupational disease was contracted: St. Louis County
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:
The claimant, while working for employer, used various hand and power tools in the construction of wooden shipping crates and performing heavy lifting.
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 wrist and elbow
14. Nature and extent of any permanent disability: None
15. Compensation paid to-date for temporary disability: -0-
16. Value necessary medical aid paid to date by employer/insurer? -0-

Employee: Stephen Garcia Injury No.: 04-148360

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: $793.91
19. Weekly compensation rate: $529.27/$354.05
20. Method wages computation: By agreement

COMPENSATION PAYABLE

21. Amount of compensation payable: None

22. Second Injury Fund liability: N/A

TOTAL: -0-

23. Future requirements awarded: N/A

Said payments to begin N/A 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:

N/A

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Stephen Garcia

Injury No.: 04-148360

Dependents: N/A

Before the
Division of Workers' Compensation
Department of Labor and Industrial Relations of Missouri
Jefferson City, Missouri

Employer: Hussmann Corporation

Additional Party: N/A

Insurer: Indemnity Ins. Co. of North America

Checked by: CTL:tr

PREFACE

A hearing was held in the above-mentioned matter on September 28, 2006. The Claimant, Stephen Garcia, was represented by Attorney Kevin Wayman and the Employer/Insurer was represented by Attorney Kenneth Alexander.

ISSUES

1. Did Claimant sustain an occupational disease arising out of and in the course of his employment;
2. Employer's liability for past medical expenses in the amount of $2,000.00;
3. Whether Claimant is entitled to past temporary total disability benefits in the amount of $8,649.20; and
4. Whether Claimant sustained any permanent partial disability to his right wrist and elbow.

EXHIBITS

The Claimant offered the following exhibits:

Exhibit A. Records from Dr. Ebel.
Exhibit B. Records from Dr. Haueisen.
Exhibit C. Report of Dr. Bruce Schlafly with Addendum.

The Employer offered the following exhibit:

Exhibit 1. Report of Dr. Sudekum.

FINDINGS OF FACT

1. Claimant became employed at Hussmann Corporation in July 1992 and stated that approximately since 1997 he worked in the shipping and receiving area. Claimant testified that he had to use different types of hand and air tools in the construction of wooden crates and also had to do a lot of heavy lifting in his work.

2. Claimant, in the year 2002, started have some complaints with his right upper extremity and he was seen by the company doctor who ordered Claimant to undergo physical therapy.

3. Claimant, because he was having problems with his right upper extremity, went to see his personal physician, Dr. Ebel, in July of 2004, and according to Dr. Ebel's records, Claimant's complaints were numbness from his ear down his arm about his elbow and numbness and tingling in his hand.

4. According to Dr. Ebel's records, the doctor thought possibly that Claimant had either a lacunar infarction or malfunction of the sensory tract going into his right face and arms due to an insult to the brainstem. Dr. Ebel thought possibly the Claimant was undergoing or developing multiple sclerosis.

5. Dr. Ebel saw the Claimant on August 6, 2004, and the records indicate that he was of the opinion that Claimant's paresthesis of the right side of the Claimant's face and right arm were improving and he was unable to come up with a diagnosis and thought that the Claimant would have a full recovery.

6. Claimant, after having seen his primary doctor, Dr. Ebel, was released after four weeks of care and the Claimant took off work for three months because of his complaints in July 2004.

7. Claimant is seeking $2,000.00 in unpaid medical expenses as a result of what he claims his occupational disease of July 2004 and is also seeking 35 and 1/7 weeks of short term disability.

RULINGS OF LAW

I find from the substantial weight of the evidence:

1. Claimant's claim alleging occupational disease in July of 2004 is denied. Claimant did not present any substantial evidence to show that he sustained a compensable injury due to repetitive motion. The only medical evidence was that of Dr. Ebel who saw the Claimant in August of 2004 with complaints of numbness in the right side of his face and upper extremity and that the doctor was unable to reach any diagnosis.

2. Claimant did not sustain an occupational disease in July 2004 which arose out of and in the course of his employment with Hussmann Corporation.

3. Claimant is not entitled to any past temporary total disability award or an award for past medical expenses of $2,000.00 or any award for permanent partial disability resulting from the July 2004 claim.

Date: _____ Made by: _____

Cornelius T. Lane
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia "Pat" Secrest
Director
Division of Workers' Compensation

Employee: Stephen Garcia Injury No.: 04-148360

Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

Injury No.: 05-139469

Employee: Stephen Garcia

Employer: Hussmann Corporation

Insurer: Indemnity Insurance Company of North America

Date of Accident: Alleged December 30, 2005

Place and County of Accident: St. Louis 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 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 November 21, 2006, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Cornelius T. Lane, issued November 21, 2006, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 29th day of June 2007.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

DISSENTING OPINION FILED
John J. Hickey, Member

Attest:

Secretary

DISSENTING OPINION

I have reviewed and considered all of the competent and substantial evidence on the whole record. Based on my review of the evidence as well as my consideration of the relevant provisions of the Missouri Workers' Compensation Law, I believe the decision of the administrative law judge should be reversed.

The administrative law judge's award consisted of twelve numbered findings of fact and one ruling of law that concluded simply: "With regard to the December 30, 2005 claim, Claimant did not submit sufficient evidence that Claimant's occupational exposure was the prevailing factor in causing the medical condition and disability that the Claimant alleges to his right wrist and elbow."

Section 288.808 provides: "The burden of proving an entitlement to compensation under this chapter is on the employee or dependent. In asserting any claim or defense based on a factual proposition, the party asserting such claim or defense must establish that such proposition is more likely to be true than not true."

The administrative law judge summarized the opinion of Dr. Sudekum offered on behalf of employer at Finding of Fact Number 12. Dr. Sudekum was of the opinion that employee's right upper extremity complaints and symptoms were not causally connected to his employment.

Oddly, there is no mention in the enumerated findings of fact of the medical report of Dr. Schlafly, which was admitted without objection. Dr. Schlafly set his opinions out in the report:

> My opinion is that his repetitive use of his right hand and upper extremity at his work at Hussmann is the substantial and prevailing factor in the cause of his right carpal tunnel syndrome and right cubital tunnel syndrome, and in the need for the surgical treatment that Dr. Haueisen performed, which was appropriate and reasonable treatment, even though it has not restored normal sensation to the right hand.
>
> My opinion is that Mr. Garcia has 30 percent permanent partial disability of the right wrist and 30 percent permanent partial disability of the right elbow, due to the work related right carpal tunnel syndrome/release and right cubital tunnel syndrome/ulnar nerve transposition…Mr. Garcia's current restrictions include no use of vibrating equipment with the right hand and no lifting greater than ten pounds with the right hand alone. He should continue under the care of Dr. Haueisen.
>
> (Tr. 83).

The administrative law judge did not make a finding that Dr. Schlafly's opinion was incredible. The administrative law judge did not make a finding that Dr. Sudekum's causation opinion was more persuasive or more credible than Dr. Schlafly's. Nonetheless, the administrative law judge concluded that "Claimant did not submit sufficient evidence that Claimant's occupational exposure was the prevailing factor in causing the medical condition and disability that the Claimant alleges to his right wrist and elbow."

287.067.3. RSMo (Cum Supp. 2006) sets forth employee's proof:

> An injury due to repetitive motion is recognized as an occupational disease for purposes of this chapter. An occupational disease due to repetitive motion is compensable only if the occupational exposure was the prevailing factor in causing both the resulting medical condition and disability. The "prevailing factor" is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability.

An analysis of the opinion of Dr. Schlafly reveals that he most certainly has provided competent evidence that employee's occupational exposure was the prevailing factor in causing the medical condition and disability that the claimant alleges to his right wrist and elbow.

1. The occupational exposure was the prevailing factor in causing the resulting medical condition.

   My opinion is that his repetitive use of his right hand and upper extremity at his work at Hussmann is the substantial and prevailing factor in the cause of his right carpal tunnel syndrome and right cubital tunnel syndrome.

2. The occupational exposure was the prevailing factor in causing both the resulting medical condition and disability.

> My opinion is that Mr. Garcia has 30 percent permanent partial disability of the right wrist and 30 percent permanent partial disability of the right elbow, due to the work related right carpal tunnel syndrome/release and right cubital tunnel syndrome/ulnar nerve transposition…

The notes of Dr. Haueisen support Dr. Schlafly's opinion. Dr. Haueisen's notes reveal his belief that employee's work activities may be implicated in the causation of employee's right upper extremity problems. I find Dr. Schlafly more persuasive than Dr. Sudekum on the issue of causation. I believe employee has shown it is more likely than not that his right upper extremity condition was caused by occupational exposure. The award should not stand.

I would reverse the award of the administrative law judge denying compensation. I would award compensation including past medical expenses, temporary total disability benefits, and permanent partial disability benefits. For the foregoing reasons, I respectfully dissent from the decision of the majority of the Commission.

_____

John J. Hickey, Member

AWARD

Employee: Stephen Garcia

Injury No.: 05-139469

Dependents: N/A

Before the **Division of Workers' Compensation** Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri

Employer: Hussmann Corporation

Additional Party: N/A

Insurer: Indemnity Ins. Co. of North America

Hearing Date: September 28, 2006

Checked by: CTL:tr

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? No

3. 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

6. Date of accident or onset of occupational disease: Alleged December 30, 2005

7. State location where accident occurred or occupational disease was contracted: St. Louis County

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

10. 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 repetitive use of hand and power tools and heavy lifting.

12. Did accident or occupational disease cause death? No Date of death? N/A

15. Part(s) of body injured by accident or occupational disease: Alleged right wrist and elbow

16. Nature and extent of any permanent disability: N/A

15. Compensation paid to-date for temporary disability: -0-

16. Value necessary medical aid paid to date by employer/insurer? -0-

Employee: Stephen Garcia Injury No.: 05-139469

17. Value necessary medical aid not furnished by employer/insurer? N/A

19. Employee's average weekly wages: $793.91

19. Weekly compensation rate: $529.27/$365.08

20. Method wages computation: By agreement

COMPENSATION PAYABLE

21. Amount of compensation payable: None

22. Second Injury Fund liability: N/A

TOTAL: -0-

23. Future requirements awarded: N/A

Said payments to begin N/A 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:

N/A

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Stephen Garcia	Injury No.:	05-139469
Dependents:	N/A	Before the	
Employer:	Hussmann Corporation	**Division of Workers' Compensation**	
Additional Party:	N/A	Department of Labor and Industrial Relations of Missouri Jefferson City, Missouri	
Insurer:	Indemnity Ins. Co. of North America	Checked by:	CTL:tr

PREFACE

A hearing was held in the above-mentioned matter on September 28, 2006. The Claimant, Stephen Garcia, was represented by Attorney Kevin Wayman and the Employer/Insurer was represented by Attorney Kenneth Alexander.

ISSUES

5. Whether Claimant's alleged injuries to his right wrist and elbow was an incidence of occupational disease arising out of and in the course of his employment;
6. Employer's liability for past medical expenses in the amount of $2,000.00;
7. Whether Claimant is entitled to past temporary total disability benefits in the amount of $8,649.20; and
8. Whether Claimant sustained any permanent partial disability to his right wrist and elbow.

EXHIBITS

The Claimant offered the following exhibits:

Exhibit A. Records from Dr. Ebel.
Exhibit B. Records from Dr. Haueisen.
Exhibit C. Report of Dr. Bruce Schlafly with Addendum.

The Employer offered the following exhibit:

Exhibit 1. Report of Dr. Sudekum.

FINDINGS OF FACT

8. Claimant became employed at Hussmann Corporation in July 1992 and stated that approximately since 1997 he worked in the shipping and receiving area. Claimant testified that he had to use different types of hand and air tools in the construction of wooden crates and also had to do a lot of heavy lifting in his work.

9. In July of 2004 Claimant stated that he had some complaints with his right upper extremity and eventually saw his personal doctor, Dr. Ebel. Claimant had complaints of numbness from his ear down his arm with a burning sensation about his elbow and numbness and tingling in his hand.

10. On July 21, 2004, Dr. Ebel saw the Claimant and recorded his problems with regard to the problems he was having and Dr. Ebel was suspicious that Claimant may be developing multiple sclerosis and noted that he was going to see a neurologist.

11. On August 6, 2004, Claimant went back to see Dr. Ebel and reported that the paresthesia of the right side of the Claimant's face and right arm were improving and he was unable to come up with a diagnosis and thought that the Claimant would have a full recovery.

12. With regard to Claimant's claim in Injury Number 05-139469, Claimant returned to see Dr. Ebel on December 30, 2005, complaining of having problems in his right hand and Dr. Ebel referred him to a hand specialist, Dr. Haueisen.

13. Claimant stated in his testimony that he did not work from January 3, 2006 through July 7, 2006 and received short term disability benefits in the amount of $325.00 per week.

14. Dr. Haueisen saw Claimant on January 17, 2006 and according to Dr. Haueisen's notes he reported that the nerve conduction tests performed at Dr. Ebel's request in July of 2004 were normal and recommended EMG studies.

15. Claimant, on January 25, 2006, saw Dr. Haueisen and the doctor's notes show that he reviewed Claimant's recent EMG studies and they did not show any evidence of denervation with some subtle changes in the first dorsal interosseous and APB muscle. The Claimant and Dr. Haueisen decided that surgery would be necessary to relieve the Claimant's numbness in his hand.

16. Dr. Haueisen told the Claimant and his wife that there was no clear cut causal connection with regard to the surgery to be performed as work related although it could possibly be implicated with work activities.

17. Claimant underwent surgery by Dr. Haueisen on February 23, 2006 consisting of a right carpal tunnel release and right submuscular ulnar nerve transposition for cubital tunnel syndrome. After the surgery, Claimant continued to follow up with Dr. Haueisen whose records indicate that the complaints Claimant had post-operatively were out of proportion to any objective abnormality.

18. On July 27, 2006, Claimant saw Dr. Haueisen and it was the doctor's opinion that Claimant was not putting any effort into rehabilitation and that his hand numbness was not consistent with organic nerve entrapment. The doctor further felt that Claimant had multiple inconsistencies that were suggestive of malingering and did not believe that he should be kept out of work indefinitely and that Claimant had adequate time for soft tissue healing with surgery having been performed 4 ½ months earlier.

19. Claimant was examined by Dr. Sudekum at the request of the Employer and after having reviewed the medical records as well as the various opinions of the doctors it was his opinion to a reasonable degree of medical certainty that the Claimant's subjective right extremity complaints and symptoms were not causally connected to his employment and that surgery and time off work were not a result of his employment.

RULINGS OF LAW

I find from the substantial weight of the evidence:

1. With regard to the December 30, 2005 claim, Claimant did not submit sufficient evidence that Claimant's occupational exposure was the prevailing factor in causing the medical condition and disability that the Claimant alleges to his right wrist and elbow.

Date: _____ Made by: _____

Cornelius T. Lane
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

_____

Patricia "Pat" Secrest
Director
Division of Workers' Compensation