

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

Injury No.: 89-400031

Employee: Velvet Grant

Employer: Anheuser-Busch Companies, Inc.

Insurer: Self-Insured c/o Helmsman Management Services

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 March 5, 2010, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge John K. Ottenad, issued March 5, 2010, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 8th day of April 2010.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Velvet Grant

Injury No.: 89-400031

Dependents: N/A

Employer: Anheuser-Busch Companies, Inc.

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

Additional Party: N/A

Insurer: Self-Insured
C/O Helmsman Management Services

Hearing Date: February 2, 2010

Checked by: JKO

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: (allegedly) December 31, 1989
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? N/A
7. Did employer receive proper notice? N/A
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? N/A
10. Was employer insured by above insurer? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: Claimant allegedly sustained an occupational disease to her right and left hands and wrists while performing office work for Employer.
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: (allegedly) Right and Left Hands and Wrists
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: \$0.00
16. Value necessary medical aid paid to date by employer/insurer? \$0.00

Employee: Velvet Grant

Injury No.: 89-400031

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: \$357.69
- 19. Weekly compensation rate: \$238.47 for TTD/\$238.47 for PPD
- 20. Method wages computation: By agreement (stipulation) of the parties

COMPENSATION PAYABLE

21. Amount of compensation payable: None

\$0.00

22. Second Injury Fund liability: N/A

TOTAL:

\$0.00

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.

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Velvet Grant	Injury No.: 89-400031
Dependents:	N/A	Before the
Employer:	Anheuser-Busch Companies, Inc.	Division of Workers'
Additional Party:	N/A	Compensation
		Department of Labor and Industrial
		Relations of Missouri
		Jefferson City, Missouri
Insurer:	Self-Insured	Checked by: JKO
	C/O Helmsman Management Services	

On February 2, 2010, the employee, Velvet Grant, appeared in person, pro se, for a hearing for a final award on her claim against the employer, Anheuser-Busch Companies, Inc., which is duly Self-Insured under the statute. The employer, Anheuser-Busch Companies, Inc. was represented at the hearing by its attorney, Mr. Todd D. Hilliker. The Second Injury Fund is not a party to this case. At the time of the hearing, the parties agreed on certain stipulated facts and identified the issues in dispute. These stipulations and the disputed issues, together with the findings of fact and rulings of law, are set forth below as follows:

STIPULATIONS:

- 1) On or about December 31, 1989, Velvet Grant (Claimant) allegedly sustained an occupational disease.
- 2) Claimant was an employee of Anheuser-Busch Companies, Inc. (Employer) through October 9, 1989.
- 3) Venue is proper in the City of St. Louis.
- 4) At the relevant time, Claimant earned an average weekly wage of \$357.69, resulting in applicable rates of compensation of \$238.47 for total disability benefits and \$238.47 for permanent partial disability benefits.
- 5) Employer has not paid any benefits to date.

ISSUES:

- 1) Did Claimant sustain an occupational disease?
- 2) Did the occupational disease arise out of and in the course of employment?

- 3) Are Claimant's injuries and continuing complaints medically causally connected to her alleged occupational disease at work?
- 4) Did Employer receive proper notice of the injury?
- 5) Is the Claim for Compensation barred by the Statute of Limitations?
- 6) Is Claimant entitled to payment for future medical benefits in an amount to be determined related to this occupational disease?
- 7) Is Claimant entitled to TTD benefits in an amount, and for a time period, to be determined?
- 8) What is the nature and extent of Claimant's permanent partial disability attributable to this occupational disease?

EXHIBITS:

The following exhibits were offered into evidence:

Employee Exhibits:

- A. Anheuser-Busch letter dated June 21, 2007
- B. Division of Orthopaedic Surgery SLUCare letter dated November 26, 2008
- C. St. Mary's Health Center – Emergency Department record dated October 28, 2007
- D. Medical treatment records of St. Louis University Hospital (Dr. David Kieffer) and Dr. Thomas DeBartolo

Notes: 1) *The parties asked that I take judicial or administrative notice of the file contents of the Division of Workers' Compensation in this matter.*

2) *Some of the records submitted at hearing contain handwritten comments or other marks. All of these marks were on these records at the time they were offered into evidence and no other marks have been added since their admission on February 2, 2010.*

FINDINGS OF FACT:

Based on a comprehensive review of the evidence, including Claimant's testimony, the medical records, and the letter from Employer, as well as my personal observations of Claimant at hearing, I find:

- 1) **Claimant** testified she performed office work for Anheuser-Busch Companies, Inc. (Employer) up until she stopped working there. A **letter from Anheuser-Busch Companies, Inc. dated June 21, 2007** (Exhibit A) confirms that Claimant was hired

by Employer as a temporary office employee on February 16, 1986. Claimant transferred to a full-time salaried secretarial position on May 19, 1986. She then separated from Employer on October 9, 1989. The letter also confirms that Claimant had a subsequent period of employment at Grant's Farm for Employer from March 22, 1997 to October 26, 1997.

- 2) Claimant testified that after she stopped working for Employer and before she had started working anywhere else doing that type of office work, she developed problems in both hands, both wrists and both lower arms, which she attributed to her work in the office for Employer. She testified that she had heard about carpal tunnel syndrome and she sought out a doctor to provide her treatment for her arms. She ended up with Dr. Kieffer at St. Louis University Hospital.
- 3) Medical treatment records from **St. Louis University Hospital and Dr. David Kieffer** (Exhibit D) document the treatment Claimant received at that facility for her hands and wrists. According to the records, on September 27, 2005, Dr. Kieffer performed surgery to treat Claimant's carpal tunnel syndrome in the left wrist.
- 4) The next record, then, is an office visit report from **Dr. Thomas DeBartolo** (Exhibit D) dated December 19, 2006. In that report, there is a history of Claimant's left wrist surgery in 2005, as well as a right wrist carpal tunnel release surgery in 2004. She reported no improvement following the surgeries and continued to complain of bilateral hand pain that wakes her up at night. The report indicates that she tried to have a nerve conduction/EMG study the prior year, but she could not tolerate more than a few minutes of the test and so it was aborted. The report also notes, "Patient has not worked since 1989, as a secretary, for unknown reasons." The physical exam at that time revealed no thenar or hyperthenar muscle wasting, intact sensation, negative Phalen's test bilaterally and negative Tinel's test bilaterally. X-rays of the right and left wrists showed mild degenerative changes in the left wrist, but a normal right wrist. Dr. DeBartolo diagnosed Claimant with bilateral hand pain. He wrote that due to the lack of objective findings, as well as the lack of studies, he did not feel Claimant had carpal tunnel syndrome or any other sort of compression etiology. Claimant was apparently requesting a steroid injection and/or pain medications, but the doctor told her that without a clear diagnosis for her hand pain, he would not provide such treatment for her.
- 5) There is absolutely no indication in any of the records from St. Louis University Hospital, Dr. David Kieffer, or Dr. Thomas DeBartolo that Claimant's bilateral hand complaints were in any way medically causally related to, or caused by, her work for Employer.
- 6) Claimant apparently sought treatment at the **St. Mary's Health Center—Emergency Department** (Exhibit C) on October 28, 2007. What Claimant submitted into evidence as Exhibit C was page 1 of 5 of her discharge instructions from that emergency room visit. In the middle of the page, there is information about a diagnosis of carpal tunnel syndrome. There is information on that page of specifically what it is, what the symptoms might be, and what treatment may be needed. However, at the very bottom of that page was the statement, "**TODAY**

YOUR DIAGNOSIS IS: ANKLE PAIN.” Given that last line, it is unclear exactly why Claimant appeared at the emergency department on that date. However, again, there is no indication in this record that Claimant’s bilateral hand complaints were in any way medically causally related to, or caused by, her work for Employer.

- 7) Claimant filed her Claim for Compensation in this case on April 23, 2008. It was assigned Injury No. 89-400031 by the Division of Workers’ Compensation. In her Claim, Claimant alleged injury to her hands. She further alleged a date of accident or occupational disease of 1987 to 1989. In the description of injury, Claimant wrote, “I was a secretary. I’ve been diagnosed with carpal tunnel in my hands.” Under additional statements she also wrote, “I’m having difficulty with my hands as well as getting employment.”
- 8) Finally, there is a letter from the **Division of Orthopaedic Surgery at St. Louis University Hospital** (Exhibit B) dated November 26, 2008. It confirms Claimant’s appointment with Dr. Thomas DeBartolo on December 16, 2008. There is no indication in the letter what the reason for this doctor’s appointment might be, nor any indication that the visit was in any way medically causally related to, or caused by, her prior employment with Employer.
- 9) Claimant testified that she continued to have problems with her hands after surgery, and continues to have problems with her hands working the way they used to, up to today. She wants to get back to work, but she is afraid that down the road financially she might have trouble caring for herself and getting treatment for her hands because some of the medical providers, to whom she has gone for treatment, do not accept her current insurance. She asked for compensation and future medical treatment from Employer for her carpal tunnel syndrome.
- 10) Despite asking Claimant specifically if she would like to put anything else on the record regarding her job or her continued complaints with her hands, she declined to offer any further testimony or evidence, indicating that she believed she had already been clear about the job and the continued problems she had with her hands.

RULINGS OF LAW:

Based on a comprehensive review of the evidence described above, including Claimant’s testimony, the medical records, the letter from Employer, and my personal observations of Claimant at hearing, as well as based on the applicable laws of the State of Missouri, I find the following:

Given the nature of this Claim and the evidence submitted, these three issues in this case can be addressed at the same time.

Issue 1: Did Claimant sustain an occupational disease?

Issue 2: Did the occupational disease arise out of and in the course of employment?

Issue 3: Are Claimant’s injuries and continuing complaints medically causally connected

to her alleged occupational disease at work?

Under **Mo. Rev. Stat. § 287.067.1 (1989)**, occupational disease is defined as “a disease arising out of and in the course of the employment.” That section continues, “A disease shall be deemed to arise out of the employment only if there is apparent to the rational mind upon consideration of all the circumstances a direct causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as a proximate cause, and which does not come from a hazard to which workers would have been equally exposed outside of the employment.”

Claimant bears the burden of proof on all essential elements of her Workers' Compensation case. To establish a claim under this section the claimant is required to prove by competent and substantial evidence that there is a recognizable link between the disease and some distinctive feature of the job which is common to all jobs of that sort. *Estes v. Noranda Aluminum, Inc.*, 574 S.W.2d 34, 37-38 (Mo. App. 1978). There must be evidence of a direct causal connection between the conditions under which the work is performed and the occupational disease. *Sellers v. Trans World Airlines, Inc.*, 752 S.W.2d 413, 415-416 (Mo. App. W.D. 1988) overruled on other grounds by *Hampton v. Big Boy Steel Erection*, 121 S.W.3d 220 (Mo. 2003).

The determinative inquiry regarding whether this is a compensable occupational disease involves two considerations: 1) whether there was an exposure to the disease, carpal tunnel syndrome, 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 claimant's job which is common to all jobs of that sort. *Jackson v. Risby Pallet and Lumber Co., Inc.*, 763 S.W.2d 575, 578 (Mo. App. 1987). In a Workers' Compensation case, medical causation, not within common knowledge or experience, must be established by scientific or medical evidence showing cause and effect relationship between complained of condition and asserted cause. *Brundige v. Boehringer Ingelheim*, 812 S.W.2d 200 (Mo. App. W.D. 1991).

Considering the evidence listed above, I find that Claimant failed to meet her burden of proving that an occupational disease occurred, which arose out of and in the course of employment for Employer, and which was medically causally connected to it. She failed to meet her burden of proof by failing to provide testimony to link the alleged carpal tunnel syndrome to some distinctive feature of her job which is common to all jobs of that sort. She further failed to meet her burden of proof by failing to provide any expert medical opinions upon which to base a medical causation decision.

Quite frankly, there is no medical causation opinion in the record upon which to base a finding in Claimant's favor in this case. Not only is there no such medical causation opinion per se, but the medical records in evidence really don't even mention Claimant's work at all, except to point out she has not worked as a secretary since 1989 “for unknown reasons.” With no real description of her work activities for Employer in the medical records, and no discussion at all of whether her hand condition is in any way related to her work activities for Employer, I find Claimant has failed to meet her burden of proof on the medical causation issue in this case.

Although the lack of any expert medical causation opinions in evidence is the main reason that Claimant failed to meet her burden of proof in this case, Claimant also failed to establish a link between the alleged carpal tunnel syndrome and some distinctive feature of her job which is common to all jobs of that sort, by failing to provide detailed testimony in that regard. The evidence is clear that Claimant worked as a secretary in an office for Employer. However, Claimant provided no detailed description of her job activities or how those job activities involved the use of her hands on a daily basis. In fact, there was no evidence presented about any distinctive feature of her job that she believed was the cause of the alleged carpal tunnel syndrome.

With the complete absence of medical causation evidence or opinions in the record, and with the failure to provide testimony to establish a link between the alleged carpal tunnel syndrome and some distinctive feature of her job, which is common to all jobs of that sort, Claimant has failed to meet her burden of proof in this case. Therefore, her Claim for Compensation is denied for these reasons. Given that finding, the remaining issues in this case become moot and will not be addressed.

CONCLUSION:

Claimant failed to meet her burden of proving that she sustained an occupational disease arising out of and in the course of her employment, and which was medically casually connected to it, by failing to provide testimony to support her claim and by failing to submit any medical causation evidence. As such, the rest of the issues presented for determination are moot and the Claim for Compensation is denied.

Date: _____

Made by: _____

JOHN K. OTTENAD
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Naomi Pearson
Division of Workers' Compensation