

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

Injury No.: 02-157799

Employee: Wendy Hagan  
Employer: Christian Hospital NE NW  
Insurer: Self-insured  
Date of Accident: November 1, 2002  
Place and County of Accident: St. Louis County, Missouri

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 § 286.090 RSMo., the Commission affirms the award and decision of the administrative law judge dated May 18, 2007. The award and decision (decision) of Administrative Law Judge Cornelius T. Lane is attached hereto for reference. We adopt the findings, conclusions, decision, and award of the administrative law judge to the extent that they are not inconsistent with what is set forth below.

#### INTRODUCTION

Administrative Law Judge Lane's decision held that employee's neck, arm, and hand maladies were not a result of her keystone and other work for employer. The decision, thus, denied employee's request for past and future medical expenses and for permanent partial disability benefits. Employee filed an Application for Review with the Commission.

#### DISCUSSION

We first note that the administrative law judge made an error in fact 7 of the Findings of Fact. Fact 7 states as follows: "Dr. Hoffman testified very credibly he did not feel Claimant's work was a primary substantial factor in causing her upper extremity complaints." Dr. Hoffman did not testify, personally or through deposition; and we find no causal opinion set forth in Dr. Hoffman's reports. The balance of the decision indicates that the administrative law judge should have attributed and meant to attribute this conclusion to Dr. Charles Goldfarb.

Dr. Goldfarb was involved in employee's treatment over a substantial period of time. He is board certified in both orthopedic and hand surgery. He was very familiar with employee's duties for employer which had evolved since she began working for it in 1980.

Dr. Goldfarb determined that employee's work for employer was not a substantial factor in her development of carpal tunnel syndrome, De Quervain's tendonitis, cervical spondylitic radiopathy, or any other upper extremity conditions. Dr. Goldfarb provided three very specific reasons for his conclusions.

First, employee had multiple, diffuse, inflammatory-based problems that had presented themselves in different areas. This type of varied presentation would be unusual for a work-related cause such as keystroking.

Second, she had cervical spine disease and was over-weight. Dr. Goldfarb identified these co-morbidities as more likely risk factors with respect to employee's maladies.

Third, based on both the ergonomic studies of her duties and her descriptions to the doctor of her work for employer, Dr. Goldfarb did not believe employee's keystroking, telephone, or other duties were of the type that would likely place her at much risk. Furthermore, even during the post-operative period when she was removed from her work duties for an extended time, her upper extremity symptoms did not improve.

Dr. Daniel Kitchens (a board certified neurosurgeon) and ergonomics consultant, Jennifer Christy, agreed with Dr. Goldfarb's conclusion that employee's work for employer was not a substantial factor in the development of the various complaints connected with this case.

The ultimate determination of credibility of witnesses rests with the Commission; however, the Commission should take into consideration the credibility determinations made by an administrative law judge. When reviewing an administrative law judge's award, the Commission is not bound to yield to his or her findings including those relating to credibility and is authorized to reach its own conclusions. An administrative law judge is no more qualified than the Commission to weigh expert credibility from a transcript or deposition. *Kent v. Goodyear Tire & Rubber Co.*, 147 S.W.3d 865, 871 (Mo. App. W.D. 2004).

In this case, however, we agree with the administrative law judge's determination that the deposition testimony of Dr. Goldfarb, Dr. Kitchens, and Jennifer Christy should be given greater weight (than the information from Dr. Cohen) because their information most logically interprets the facts connected with this matter.

## CONCLUSION

Based on the most persuasive evidence and except as set forth above, we affirm the award and decision of the administrative law judge dated May 18, 2007, and award no compensation in the above-captioned case.

Given at Jefferson City, State of Missouri, this 29<sup>th</sup> day of October 2007.

## LABOR AND INDUSTRIAL RELATIONS COMMISSION

\_\_\_\_\_  
William F. Ringer, Chairman

\_\_\_\_\_  
Alice A. Bartlett, Member

\_\_\_\_\_  
John J. Hickey, Member

Attest:

\_\_\_\_\_  
Secretary

## AWARD

Employee: Wendy Hagan

Injury No.: 02-157799

Dependents: N/A

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

Employer: Christian Hospital NE NW

Additional Party:

Insurer: Self-Insured

Hearing Date: April 18, 2007

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: Commencing in 1998
5. State location where accident occurred or occupational disease was contracted: St. Louis County, Mo.
6. Was above employee in employ of above employer at time of alleged accident or occupational disease? Yes
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 alleges repetitive use of hands, arms, and neck from repetitive telephone use.
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: Neck and upper extremities
14. Nature and extent of any permanent disability: None
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? None

Employee: Wendy Hagan

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

COMPENSATION PAYABLE

21. Amount of compensation payable: None

22. Second Injury Fund liability: No

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: Wendy Hagan

Injury No.: 02-157799

Dependents: N/A

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

Employer: Christian Hospital NE NW

Additional Party: N/A

Insurer: Self-Insured

Checked by: CTL:tr

### **PREFACE**

A hearing was held in the above-mentioned matter on April 18, 2007. The Claimant, Wendy Hagan, was represented by Attorney Dennis Barbour. The Employer/Insurer was represented by Attorney Juan Arias.

### **ISSUES**

1. Accident;
2. Arising out of and in the course of employment;
3. Occupational disease;
4. Notice;
5. Medical causation;
6. Liability for past medical expenses;
7. Future medical care;
8. Nature of extent of permanent partial disability and temporary total disability;
9. Average weekly wage and rate;
10. Statute of limitations; and
11. Date of accident/occupational disease.

### **EXHIBITS**

The Claimant offered the following exhibits which were admitted into evidence:

- Exhibit A. Medical Records of Dr. Glogovac.
- Exhibit B. Medical Records of Dr. Hoffman.
- Exhibit C. Deposition of Dr. Raymond Cohen.

The Employer/Insurer offered the following exhibits which were admitted into evidence:

- Exhibit 1. Employee Report of Injury.
- Exhibit 2. Note of Occupational Health Nurse Grayson.
- Exhibit 3. Medical Records of Dr. W. Stephen Knapp, D.O.
- Exhibit 4. EMG/NCS Study by Dr. Yu.
- Exhibit 5. Deposition of Dr. Charles Goldfarb.
- Exhibit 6. Deposition of Dr. Daniel Kitchens.
- Exhibit 7. Wage Statement.
- Exhibit 8. Wage Summary.
- Exhibit 9. Report of Injury.
- Exhibit 10. Letter to Christian Hospital.
- Exhibit 11. Deposition of Jennifer Christy.

### **FINDINGS OF FACT**

1. Claimant commenced her employment with the Employer in April of 1980 in the food production area. Claimant transferred into the Patient Accounts division in 1988 and then began working as a Medicare biller from 1989 to 1997, when she became a supervisor in the Patient Accounts division. She left the supervisory position and went back to the Patient Accounts position in 2001.
2. Claimant, June of 2005, left her employment with the Employer and went to work in the accounts department at Missouri Baptist Hospital.
3. Claimant stated her work in Patient Accounts as well as a supervisor required her to be on the phone a great deal, use a computer and an adding machine. Claimant stated that she had problems with her neck and in her arms possibly because of her work and also the fact that she had to use her left shoulder and neck while on the telephone.
4. Claimant described typing with her hands in a flexed position and that it was corrected in 2002.
5. Claimant testified that she first noticed having problems with her neck and upper extremities in the late 1990s and that she continued to have problems up until the time she asked for some treatment in 2002. She stated complaints in her thumbs and pain in both hands, her hands going asleep, pain down the shoulder blades as well as problems with her neck.
6. Claimant saw Dr. Goldfarb in December of 2002 and felt that the Claimant was suffering from bilateral carpal tunnel syndrome. He did not feel that her bilateral carpal tunnel syndrome condition was a result of her work.
7. Dr. William Hoffman saw Claimant and the doctor performed an anterior cervical discectomy in March of 2003. Dr. Hoffman testified very credibly he did not feel Claimant's work was a primary substantial factor in causing her upper extremity complaints.
8. Claimant came under the care of Dr. Glogovac who performed a right trigger thumb release, right carpal tunnel release and DeQuervain's release which took place on February 4, 2004.
9. Dr. Daniel Kitchens testified very credibly that he felt that Claimant's work was not a factor in causing the Claimant's cervical disc herniation. He further opined that the Claimant's complaints of numbness and tingling in her hands were related to cervical disc herniations.

### **RULINGS OF LAW**

From all of the evidence presented before the Court, I find:

1. Claimant's injuries to the neck, arms and hands were not work related.
2. Claimant is not entitled to permanent partial disability and Employer is not liable for past medical expenses and future medical expenses.

Date: \_\_\_\_\_

Made by: \_\_\_\_\_

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

A true copy: Attest:

\_\_\_\_\_  
Patricia "Pat" Secret  
*Director*  
*Division of Workers' Compensation*