

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

Injury No.: 05-137801

Employee: Trina Hamilton
Employer: Schnucks Market, Inc. (Settled)
Insurer: Self-Insured (Settled)
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission (Commission) for review as provided by § 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 § 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated November 15, 2011. The award and decision of Administrative Law Judge Margaret D. Landolt, issued November 15, 2011, 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 22nd day of May 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

AWARD

Employee: Trina Hamilton

Injury No.: 05-137801

Dependents: N/A

Employer: Schnucks Market Inc. (Settled)

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

Additional Party: Second Injury Fund

Insurer: Self-Insured (Settled)

Hearing Date: August 15, 2011

Checked by: MDL

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? Yes
4. Date of accident or onset of occupational disease: November 21, 2005
5. State location where accident occurred or occupational disease was contracted: St. Louis, Missouri
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:
Employee used her upper extremities in a repetitive fashion
12. Did accident or occupational disease cause death? No
13. Part(s) of body injured by accident or occupational disease: Bilateral upper extremities
14. Nature and extent of any permanent disability: 30% of each elbow previously settled with Employer
15. Compensation paid to-date for temporary disability: N/A
16. Value necessary medical aid paid to date by employer/insurer? N/A

Employee: Trina Hamilton

Injury No.: 05-137801

- 17. Value necessary medical aid not furnished by employer/insurer? N/A
- 18. Employee's average weekly wages: \$533.11
- 19. Weekly compensation rate: \$368.74/\$354.05
- 20. Method wages computation: By stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable: SETTLED

22. Second Injury Fund liability: Yes

Permanent total disability benefits from Second Injury Fund:
weekly differential (\$14.69) payable by SIF for weeks beginning August 27, 2007
and, thereafter, \$368.74 for Claimant's lifetime

TOTAL: UNDETERMINED

23. 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 22.5% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Mr. Robert Meyers

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Trina Hamilton

Injury No.: 05-137801

Dependents: N/A

Before the
**Division of Workers'
Compensation**

Employer: Schnucks Market, Inc. (Settled)

Department of Labor and Industrial
Relations of Missouri
Jefferson City, Missouri

Additional Party: Second Injury Fund

Insurer: Self-Insured (Settled)

Checked by: MDL

PRELIMINARIES

A hearing was held on August 15, 2011 at the Division of Workers' Compensation in the City of St. Louis, Missouri. Trina Hamilton ("Claimant") was represented by Mr. Robert Meyers. Schnucks Market, Inc. ("Employer") which is self-insured, previously settled its liability with Claimant, and this matter proceeded to a hearing against the Second Injury Fund ("SIF") which was represented by Assistant Attorney General Kristin Frazier. Mr. Meyers requested a fee of 22.5% of Claimant's award.

The parties stipulated that on or about November 21, 2005, Claimant sustained an occupational disease arising out of and in the course of employment; Claimant was an employee of Employer; venue is proper in the City of St. Louis, Missouri; Employer received proper notice of the injury; the claim was timely filed; Claimant was earning an average weekly wage of \$533.11 resulting in weekly rates of \$368.74 for Permanent Total Disability ("PTD") benefits and \$354.05 for Permanent Partial Disability ("PPD") benefits; and in the event Claimant is found to be permanently and totally disabled, PTD benefits should commence on August 27, 2007. The only issue for resolution by hearing is whether the SIF is liable for PTD or PPD benefits.

SUMMARY OF EVIDENCE

Claimant is a 55 year old right handed woman with a high school education who worked for Employer as a cake decorator from 1989 until 2007. The job of cake decorator involves repetitive use of the upper extremities.

Beginning in 1992, Claimant began having difficulties with her upper extremities. In 1992 she was diagnosed with bilateral carpal tunnel syndrome, and underwent bilateral carpal tunnel releases. Dr. Ollinger performed the surgeries, and released her to full duty in 1993. Claimant returned to work as a cake decorator for Employer. The surgeries helped to temporarily subdue her pain. Claimant settled her claim with Employer for 17% PPD of the right hand, 15% of the left hand, and a 15% load.

In 1995, Claimant began to experience problems with trigger fingers in her right hand. She was found to have triggering of the right index, long, and ring fingers. She came under the care of Dr. Crandall in 1995. He diagnosed the problem as work related, and in February 1996, performed trigger finger releases on her right index, long, and ring fingers. Following surgery, Claimant underwent physical therapy, and returned to work full duty. Although the trigger finger releases helped relieve her pain, she continued to have clicking and difficulty bending her fingers. She settled her claim with Employer for 15% of the right hand

In 1996, Claimant developed trigger finger in her left hand. In January 1999, Dr. Crandall performed surgery on her left hand for trigger finger releases of the left index, ring, and small fingers. Dr. Crandall released Claimant to full duty in February 1999. The surgeries helped relieve some of the pain in her left hand. Claimant settled her claim with Employer for 15% PPD of the left hand.

In 1997, Claimant injured her right shoulder when she was thrown from a trailer. Dr. Bradbury performed a glenohumeral arthroscopy and debridement of synovitis subscapularis tendon, and subacromial arthroscopy with initial attempted subacromial decompression, and subsequent open subacromial decompression. The post operative diagnosis was right shoulder impingement syndrome. Following her right shoulder surgery she continued to treat with Dr. Bradbury through 1999. She had extensive physical therapy both before and after her surgery, and cortisone injections. She also treated at the Barnes Hospital pain clinic. She also received treatment from her primary care doctor. Ultimately she received additional orthopedic care from Dr. VanRyn who performed a right shoulder arthroscopy distal clavicle excision in July 2001. The post-operative diagnosis was right shoulder AC joint arthralgia.

Leading up to 2005, Claimant experienced multiple symptoms in her hands as a result of her carpal tunnel syndrome and trigger fingers. Her hands were weak, she had difficulty gripping, and she dropped things. She experienced numbness and tingling at night, and her hands swelled. She had difficulty with her fine motor skills.

Claimant also had difficulty with her right shoulder leading up to 2005. She had reduced range of motion and difficulty lifting above her head. She had difficulty washing her hair, or lifting anything off a shelf. She had pain sleeping at night, and turning over on her side. Leading up to 2005 she had difficulty driving a car, and holding a telephone. She had restrictions in doing her job, and tasks around the house. She had difficulty sweeping, mopping, dusting, gripping, cooking, doing dishes, doing laundry, and baking. She had difficulty with her personal care such as bathing, and washing her hair.

In 2005, Claimant developed additional problems with her hands and her elbows. She saw Dr. Ollinger in January 2005 who found a work related ganglion cyst of the left long finger, as well as work related flexor synovitis of the right long and ring fingers. Claimant saw Dr. Sciortino who diagnosed right trigger thumb and treated it with a cortisone injection.

In February 2006, Dr. Glogovac performed surgery on Claimant's right hand for release of right index and small trigger fingers and right trigger thumb release. In June 2006, Dr. Glogovac operated on her left hand for left trigger thumb release, and released Claimant to return to work in June 2006.

In February 2006, Claimant was examined by Dr. Ollinger, and he diagnosed work related bilateral epicondylitis and cubital tunnel syndrome. Following a course of conservative treatment, in December 2006, Dr. Ollinger operated on the right elbow for ulnar nerve transposition and debridement of the right lateral epicondyle. In February 2007, Dr. Ollinger operated on the left elbow for ulnar nerve transposition and debridement of the left lateral epicondyle. In April 2007, he also operated to remove her ganglion cyst of the left long finger. On August 27, 2007, Dr. Ollinger released Claimant to full duty work, but by that time she was no longer employed.

Claimant settled her claim with Employer for 30% of each elbow with a 10% load.

Claimant testified the surgeries she underwent for her 2005 injuries reduced the clicking and sticking in her fingers, but she has problems with gripping, and an increase in her arthritis. The radiation and tingling from her elbows was reduced but she has substantial loss of strength and continued problems. She takes over the counter medications such as Tylenol, Ibuprofen, and Alleve, and has problems sleeping. She gets three to four hours of sleep a night. She has modified her activities. Sweeping, dusting, cooking, opening doors, and picking anything heavy up aggravate her symptoms. Her husband does the majority of the housework, including laundry. She gave up volleyball, and bowling after her first hand and shoulder surgeries, and gave up dancing after her elbow surgeries. Any movement including walking hurts her elbows. She has numbness and tingling in her fingers and thumbs at night, and off and on during the day. She returned to work for a month or two after was released to work by Dr. Ollinger. She was still working light duty, but she was unable to keep up with the pace of the job. Her arms hurt, even though she was working light duty.

The combination of her 2005 injuries and her preexisting injuries has reduced her overall strength. She is only able to drive about 25 to 30 miles without getting fatigued, and then her fingers start to hurt and stick. She has to stop and get out and move her fingers around. She can lift three to five pounds with her right hand, and two to three pounds with her left hand, which is significantly less than she could do before her 2005 injuries. She can lift five to six pounds with both arms, which is significantly worse than before 2005. She cannot push or pull with her hands, which is worse since 2005. She has trouble writing. She has to lie down and recline during the day. She has difficulty concentrating, and her memory is getting worse.

In a typical day, Claimant gets three to four hours of sleep if she's lucky. She gets up, gets dressed, and watches TV. Sometimes she reads for a while. The pain in her right hand is a four to five if she is doing nothing, and seven to eight if she is active¹. Her left hand pain is a four if she is doing nothing, and a seven to eight if she is active. Her right shoulder is a five to six if she is doing nothing, and a seven to eight if she is active. Her right elbow pain is a four to five if she is doing nothing, and a seven to eight with activity. Her left elbow pain is a four if she is doing nothing and a seven to eight if she is active. She no longer sleeps with her husband, and feels she has lost their feeling of closeness. She doesn't feel she could work in the open labor market. She doesn't know what kind of work she could do where she didn't have to use her hands and arms. She would need a job where she could take a nap.

¹ Out of a 0-10 pain scale

Dr. Bruce Schlafly testified on behalf of Claimant. Dr. Schlafly opined that her prior settlements for her bilateral carpal tunnel syndrome and multiple trigger fingers of both hands totaling 32% of the right hand and 30% of the left appeared to be reasonable. He also opined she has a 40% disability to the right shoulder. He opined she had 45% PPD of each elbow, an additional 20% PPD of each thumb, 20% PPD of the left long finger, and 20% PPD of the right small finger, but found no additional disability for the right index trigger finger release. He felt Claimant was limited to lifting no greater than five pounds with either hand or arm alone, and he restricted her to ten pounds when using both hands and arms. He indicated she should not do any work requiring overhead reaching with the right arm. He further opined she was unable to return to work as a cake decorator, and further opined she had a combination of disabilities which creates a synergistic effect between the prior disabilities of the right shoulder, her hands and the disabilities of her elbows giving a combined effect greater than the simple sum of the components, and that the disabilities created an obstacle or hindrance to employment. He opined she might be permanently and totally disabled, but deferred to a vocational rehabilitation counselor.

Mr. James England testified on behalf of Claimant. Mr. England opined that assuming she could not use her upper extremities on more than a very limited basis, and as pain was keeping her awake during parts of the night and prevented her from getting adequate rest, and on the basis that she drops things easily and cannot use her hands even for handwriting on more than a brief basis, he felt she would not even be able to sustain even sedentary to light work activities. He concluded that considering the combination of difficulties she has using her upper extremities along with her fatigue, that she was likely to remain totally disabled from a vocational standpoint.

FINDINGS OF FACT AND RULINGS OF LAW

Based upon a comprehensive review of the evidence, my observations of Claimant at hearing, and the application of Missouri law, I find:

Occupational diseases are compensable injuries under Section 287.220.1 RSMo. Section 287.220.1 requires for SIF compensation, a claimant must have a preexisting permanent partial disability of such seriousness as to constitute a hindrance or obstacle to her employment and then sustain a subsequent compensable injury that results in additional permanent partial disability. The term "injury" as defined in Section 287.020.3(5) states:

The terms "injury" and "personal injuries" shall mean violence to the physical structure of the body and to the personal property which is used to make up the physical structure of the body, such as artificial dentures, artificial limbs, glass eyes, eyeglasses and other prostheses which are placed in or on the body to replace the physical structure and such disease or infection as naturally results therefrom. These terms shall in no case **except as specifically provided in this chapter** be construed to include occupational disease in any form. [Emphasis added]

Section 287.067.3 states: 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. [Emphasis added]

Reading these statutory provisions together, I find Section 287.220.1 applies to injuries due to occupational diseases.

The parties stipulated Claimant sustained an occupational disease arising out of and in the course of employment on or about November 21, 2005. I find Claimant sustained PPD of 30% of each elbow as a result of that injury by occupational disease. Claimant settled her claim with Employer for that amount and the evidence supports that level of disability. I find Claimant's occupational disease constituted a hindrance or obstacle to employment or re-employment.

I further find Claimant's 2005 upper extremity injuries combined with her preexisting bilateral hand and right shoulder injuries, which were also a hindrance or obstacle to employment or re-employment, to render her permanently and totally disabled, and unable to compete in the open labor market. The SIF is therefore liable for PTD benefits. Claimant's testimony is substantial and credible. There is no credible evidence that she is not permanently and totally disabled as a result of her primary and preexisting injuries. Mr. England's testimony that Claimant is not employable in the open labor market is credible and uncontroverted.

This award is subject to an attorney's lien in the amount of 22.5% in favor of Claimant's attorney Mr. Robert Meyers.

Date: _____

Made by: _____

MARGARET D. LANDOLT
Administrative Law Judge
Division of Workers' Compensation