

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

Injury No.: 03-141125

Employee: Cherie Knapp
Employer: MERS Goodwill Industries
Insurer: SWIM/Self-Insured
Date of Accident: Alleged October 31, 2003
Place and County of Accident: Alleged St. Louis City

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 October 3, 2005, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Joseph E. Denigan, issued October 3, 2005, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 12th day of April 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

NOT SITTING

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Cherie Knapp

Injury No.: 03-141125

Dependents: N/A
Employer: MERS Goodwill Industries
Additional Party: N/A
Insurer: SWIM/Self-Insured
Hearing Date: July 14, 2005

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

Checked by: JED: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: N/A
5. State location where accident occurred or occupational disease was contracted: N/A
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? Yes
10. Was employer insured by above insurer? Self-Insured
11. Describe work employee was doing and how accident occurred or occupational disease contracted: N/A
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: N/A
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: N/A
16. Value necessary medical aid paid to date by employer/insurer? N/A

Employee: Cherie Knapp

Injury No.:

03-141125

17. Value necessary medical aid not furnished by employer/insurer? -0-
18. Employee's average weekly wages: \$600.00
19. Weekly compensation rate: \$400.00/\$347.05
20. Method wages computation: Stipulation

COMPENSATION PAYABLE

21. Amount of compensation payable: None
22. Second Injury Fund liability: No

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:	Cherie Knapp	Injury No.: 03-141125
Dependents:	N/A	Before the Division of Workers'
Employer:	MERS Goodwill Industries	Compensation Department of Labor and Industrial
Additional Party:	N/A	Relations of Missouri Jefferson City, Missouri
Insurer:	SWIM/Self-Insured	Checked by: JED

This case involves a disputed repetitive trauma injury alleged by Claimant with the reported onset date of April 2004. Employer admits Claimant was employed on said date and that any liability was fully self-insured. The Second Injury Fund is not a party to this claim. Both parties are represented by counsel. This matter proceeds pursuant to Hardship Petition.

Issues for Trial

1. notice
2. incidence of occupational disease
3. future medical treatment; and,
4. nature and extent permanent partial disability.

FINDINGS OF FACT

Stipulations

The parties stipulate that Claimant's average weekly wage was \$600.00 and applicable compensation rates of \$400.00 for temporary total disability benefits and \$347.05 for permanent partial disability benefits.

Claimant's Testimony

Claimant testified that she was hired at Employer on 10/28/98 and was terminated on 10/31/03. Since leaving Employer she has been employed as a substitute teacher for approximately two months. Her first job at Employer was an instructor for computer products that she did for almost one year. She would lecture students on how to use software such as Power Point, Excel, etc. She had to use a computer keyboard about two hours per day on this job and she had no complaints to her hands when she did this job.

She then moved into a data base administrator position that she performed about two and a half years. She also gave instruction on visual basics which entailed lecture for six weeks for two-hour classes, three to four times per week. She installed cable maybe once every three months in this job. She would also fix computers by installing hardware, pulling off covers or replacing parts. She performed some data entry work. She estimated keyboarding 35 hours per week. She also had to carry computers two to three times a week and they weighed approximately 50 pounds.

She last worked for Employer in the contracts department as division manager. She ran the document imaging. She would have to go to the work sites and scan documents into the computer or she would collect document boxes for scanning. She had employees helping her scan. At times, she would work from home. As division manager, she would attend meetings and provide technical support where she visits customers. She worked here until her employment terminated.

Claimant says she developed complaints to her hands approximately two years after she began her employment. At the beginning she would get occasional numbness but her complaints progressed. At the end of her employment, she would start typing and have to shake her hands because they would go numb. She would drop her hands down to her side and that seemed to alleviate her complaints.

She testified that she told Kathy McCarney and John Gilliland, her supervisors during the time that she worked at Employer, that her hands would go numb. Claimant indicated they both merely responded, "that's weird." Claimant admitted that it was not until after she was terminated with the company that she reported to Cheryl Wicks her belief that her symptoms were work related.

Claimant's family doctor, Dr. Noguera, ordered nerve conduction studies and diagnosed bilateral carpal tunnel syndrome. Previously, she thought she simply had arthritis. She never asked for medical treatment from Employer and none was offered. Dr. Nester recommended that she wear a brace on her hands and told her she needed bilateral carpal tunnel surgery.

She acknowledged that she uses her hands playing video games as well as answering e-mails, going into chat rooms and paying bills on her computer at home. She estimates that she checked e-mails three to five times per week and paid bills on the computer for a couple of hours per week.

Cheryl Wicks

Cheryl Wicks has been employed at Employer for six and a half years as Health and Safety Coordinator and the company nurse. She handles workers' compensation claims and indicated Cherie Knapp would have known to whom workers' compensation injuries were reported. Neither Cherie Knapp nor John Gilliland ever reported a work related injury on behalf of Claimant.

Ms. Wicks testified that she was suspicious of this claim since it was reported after Claimant was terminated. Claimant was alleging bilateral carpal tunnel from typing eight hours per day and lifting heavy

objects (Exhibit B). She investigated the alleged injury. Cheryl Wicks testified that in handling workers' compensation claims, she had no knowledge of other employees who did the same job as Claimant that reported work related hand symptoms.

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Juanita Blockton

Juanita Blockton has been working for Employer for approximately four years. She is an administrative assistant and worked with Cherie Knapp in the same department. She testified that John Gilliland told her to pull the contract invoices for 2002 and 2003 which she did (Exhibit 2). She testified Claimant had other employees working for her. Ms. Blockton disagreed that Claimant performed much typing. She estimated Claimant typed an hour and a half per day. Claimant took several breaks a day and took lunch.

OPINION EVIDENCE

Dr. Nester

Claimant offered the deposition of Dr. Steven Nester, family practitioner, who examined Claimant on 11/16/04. Dr. Nester stated that Claimant had bilateral carpal tunnel syndrome and it resulted from repetitive use and trauma in association with her employment at Employer. Dr. Nester stated Claimant would likely benefit from further medical management including surgical correction of her carpal tunnel syndrome. Nevertheless, he assigned permanent disability ratings of 30% to the right wrist and 10% to the left wrist. He also gave the opinion that Claimant's body mass index of 30 was not a risk factor for developing carpal tunnel syndrome.

Dr. Nester admitted on cross-examination to a limited practice of family medicine. He acknowledged the existence of causes of carpal tunnel syndrome that are not work related. Dr. Nester was not familiar with details of hand tasks underlying Claimant's job duties:

- Q. Okay. Let's start with typing. Do you know how long she typed in a day?
A. I think she qualified that as extensive, whether, you know, more than half the day or something along those lines.
- Q. Do you know exactly how long she typed in a day?
A. In a given day? Exactly how many minutes? No.
- Q. Do you know what percentage of her day was spent typing?
A. Over 50 percent.
- Q. Where do you get that?
A. I think I remember her saying that it was on that level of involvement with her typing.
- Q. It's not in your report, is it?
A. No.
- Q. And that's not on the employee questionnaire, is it, the 50 percent?
A. I don't see it on there.
- Q. So you're going by memory?
A. I'm making it up, probably.
- Q. Do you know if there are days that she didn't type at all?
A. No.
- Q. Do you know how many breaks or rest periods she had between typing?
A. No.
- Q. Okay. Going on to lifting, do you know what she lifted?
A. No.
- Q. Do you know how much the objects that she lifted weighed?
A. No.
- Q. Do you know how often she lifted - - whether it was once a day, once a week, once a month?
A. No.
- Q. Do you know the percentage of her time of her work that comprised lifting?

- A. No.
- Q. You also mentioned programming. Do you know exactly what she did with programming?
- A. (No response.)
- Q. Do you know what that involved?
- A. I know what programming is, but I - -
- Q. Do you know what her job as programming involved?
- A. No.
- Q. And you talked about computer troubleshooting issues and that she may have used tools. Do you know what tools she used?
- A. No.
- Q. Do you know how often she did this?
- A. No.
- Q. Do you know the percentage of her workday that would have been spent troubleshooting computer issues?
- A. No.
- Q. Do you know if she used the telephone to handle these troubleshooting computer issues?
- A. No.
- Q. And then again on network repair, again, do you know what her specific job tasks were with network repair?
- A. No.
- Q. Do you know what percentage of her day was spent in network repair?
- A. No.
- Q. Do you know what tools she would have used in network repair?
- A. No.
- Q. Do you know how often she did the network repair?
- A. No.
- (Exhibit C, p. 13 - 16).

Dr. Nester admitted that if Claimant's job duties were different than what she described, that it's possible that his opinion on causation could change. Dr. Nester admitted that given alternative information it could change his opinion on the underlying cause of Claimant's bilateral carpal tunnel syndrome. (Exhibit C, p. 17).

Dr. Ollinger

Claimant saw Dr. Ollinger, who performed carpal tunnel surgeries on 6/7/04 on behalf of the employer. He took a detailed history of Claimant's job duties, had information from Employer as to Claimant's job duties when she would scan documents, how many helpers she had doing this and a copy of Claimant's job description.

It was Dr. Ollinger's opinion that Claimant's job duties at Employer were not a substantial factor in the cause of her bilateral carpal tunnel syndrome. The jobs that she performed did not have significant force for any prolonged periods, there were no awkward positions, there were no vibrations, no temperature extremes and her computer typing was not active enough to cause Claimant to have bilateral carpal tunnel syndrome. Claimant's job was not hand intensive.

In Dr. Ollinger's opinion, Claimant had other risk factors for carpal tunnel syndrome such as her obese status of a body mass index of 30, female gender and smoking. There is medical literature to support that a person's body mass is a correlating risk factor for carpal tunnel syndrome. Dr. Ollinger further testified as follows:

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- Q. And did she have also, and did she also have non-work related risk factors for carpal tunnel syndrome?
- A. Yes.
- Q. And what were those?
- A. Well, I've already indicated that the most prominent one was her obese status. Female gender, age 40 is a risk. Smoking is a risk that would probably double or triple her risk but the most prominent was her obese status.

- Q. And is there literature, is there medical literature, to support a person's body mass as a correlating risk factor for causing carpal tunnel syndrome?
- A. Yes, there is.
- Q. Is there a lot of articles on this?
- A. There are - - whatever a lot means - - I mean, I can produce four, five, six articles, different authors, different styles of analysis that will validate that obesity is a clear statistical significant risk factor for the development of carpal tunnel syndromes... (Exhibit 1, p. 16 - 17).

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RULINGS OF LAW

Incidence of Occupational Disease:

Exposure and Medical Causation

Claimant alleges that her job duties at Employer caused her to develop bilateral carpal tunnel syndrome. The review of the medical evidence and testimony at trial does not support this contention. Claimant must establish that the occupational disease was caused by conditions in the workplace. Dawson v. Associated Electric, 885 S.W.2d 712 (Mo. App. 1994). Work must be a substantial factor in causing the resulting medical condition or disability. (Section 287.020.2). The medical expert's opinion must establish a recognizable link between the work and the disease. Hayes v. Hudson Foods, Inc., 818 S.W.2d 296 (Mo. App. 1991). Here, the record of evidence does not prove that claimant's condition is work related.

The record demonstrates that Dr. Nester lacked the expertise herein to render his opinion of work related repetitive trauma. Dr. Nester is a general practitioner. The standard of treatment in the St. Louis area for treatment and surgery of neurologic deficits of the hand, including repetitive trauma, are handled by physicians board certified to perform hand surgery. It is reasonable that opinion by such an experienced physician be given more weight and value than an expert lacking similar training and experience. See Donjon v. Black & Decker (U.S.), Inc., 825 S.W.2d 31 (Mo.App. 1992).

Equally important, Dr. Nester testified that he thought her job duties were a substantial cause of her symptoms but did not identify the ergonomic details supporting his conclusion. An expert must identify that which is relied on by those in the respective area of science. State board of Registration for the Healing Arts v. McDonagh, 123 S.W.3d 146 (Mo.banc 2003). A medical expert's opinion must be supported by facts and reasons proven by competent evidence that will give the opinion sufficient probative force to be substantial evidence. Silman v. Wm. Montgomery & Assoc., 891 S.W.2d 173, 176 (Mo.App. 1995), citing Pippin v. St. Joe Mineral Corp., 799 S.W.2d 898, 904 (Mo.App. 1990). Dr. Nester did not identify ergonomic details, formal or otherwise, upon which he relied in asserting a theory of work related medical pathology. A job title or list of duties is not a substitute for an *ergonomic* description. First, he did not have a detailed analysis as to what her job duties entailed. Second, Claimant's history to him lacked sufficient details and, in any event, was contradicted by substantial credible evidence.

Finally, Dr. Nester gratuitously admitted that if Claimant's [hand tasks] were different than what she described to him that, given alternative information, his opinion on the underlying cause of her bilateral carpal tunnel syndrome could change. (Exhibit C, p. 17).

Dr. Ollinger, a hand surgeon, was more persuasive than Dr. Nester. Dr. Ollinger was of the opinion that Claimant's job duties at Employer were not a substantial factor in the development of her bilateral carpal tunnel syndrome. It was his opinion that her work did not present significant force, awkward positions, vibrations, temperature factor or duration factors to be a substantial factor in the development of her bilateral carpal tunnel syndrome. Further, Dr. Ollinger identified risk factors such as Claimant's obesity, gender and smoking as factors that are causally related to the development of carpal tunnel syndrome.

Finally, Claimant's own testimony does not support a causal relationship between her job duties and her bilateral carpal tunnel syndrome. Claimant did a wide variety of job duties entailing many different degrees and

duration of hand tasks, including substantial intervals of work that entailed no hand tasks. As John Gilliland indicated, “. . . as you will notice from Cherie’s job description, her primary duty was to train all production employees in the performance of their tasks. Although this did require her to demonstrate the keystrokes required, it also required observing the employees, performing quality checks (visual), and holding discussions with customers.” (Exhibit 2).

While Claimant’s role was diverse and highly flexible, that value to Employer is not a substitute for a proof of medical causation.

Conclusion

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Accordingly, on the basis of the substantial competent evidence contained within the whole record, Claimant is found to have failed to sustain her burden of proof. Claim denied. The other issues are moot.

Date: _____

Made by: _____

Joseph E. Denigan
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Patricia “Pat” Secrest
Director
Division of Workers' Compensation