

TEMPORARY OR PARTIAL AWARD
(Affirming Award and Decision of Administrative Law Judge)

Injury No.: 11-014662

Employee: Kristin Lane
Employer: City of Independence
Insurer: City of Independence
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)

The above-entitled workers' compensation case is submitted to the Labor and Industrial Relations Commission for review as provided by § 287.480 RSMo, which provides for review concerning the issue of liability only. Having reviewed the evidence and considered the whole record concerning the issue of liability, the Commission finds that the award of the administrative law judge in this regard 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 and adopts the award and decision of the administrative law judge dated April 25, 2013.

This award is only temporary or partial, is subject to further order and the proceedings are hereby continued and kept open until a final award can be made. All parties should be aware of the provisions of § 287.510 RSMo.

The award and decision of Chief Administrative Law Judge Paula McKeon, issued April 25, 2013, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 1st day of August 2013.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

John J. Larsen, Jr., Chairman

James G. Avery, Jr., Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

TEMPORARY AWARD

Employee: Kristin Lane

Injury No. 11-014662

Dependents: N/A

Employer: City of Independence

Self-Insurer: City of Independence

Additional Party: N/A

Hearing Date: April 5, 2012

Checked by: PAM/lh

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: February 28, 2011.
5. State location where accident occurred or occupational disease was contracted: Independence, Jackson County, 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: Lane developed bilateral upper extremity injuries from repetitive activities at work.
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: Right and left upper extremity.
14. Nature and extent of any permanent disability: N/A
15. Compensation paid to-date for temporary disability: None.

16. Value necessary medical aid paid to date by employer/insurer? N/A
17. Value necessary medical aid not furnished by employer/insurer? N/A.
18. Employee's average weekly wages: N/A
19. Weekly compensation rate: \$508.11/\$418.58 (by stipulation).
20. Method wages computation: By stipulation.

COMPENSATION PAYABLE

21. Amount of compensation payable: N/A
22. Second Injury Fund liability: N/A
23. Future requirements awarded: Yes.

Said payment to begin as of the date of this award and to be payable and be subject to modification and review as provided by law. City of Independence is ordered to provide such medical treatment as is necessary to cure and relieve the Employee of her injury.

The compensation awarded to the Claimant shall be subject to a lien in the amount of 25 percent in favor of Stuart Wieland, Attorney, for reasonable and necessary attorney's fees pursuant to Mo.Rev.Stat. §287.260.1.

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Kristin Lane

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Dependents: N/A

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FINDINGS OF FACT AND RULINGS OF LAW

On April 5, 2013, the Employee and Employer appeared for a temporary hearing for hardship benefits. The Division had jurisdiction to hear this case pursuant to Section 287.110. The Employee, Kristin Lane, appeared in person and with counsel, Stuart Wieland. The Employer appeared through Jeffrey Deane. The Second Injury Fund was not a party to the case.

STIPULATIONS

The parties stipulated to the following:

- 1) That the Employer and Employee were operating under and subject to the provisions of Missouri workers' compensation law;
- 2) That Lane notified Employer of her injury and filed her Claim for Compensation within the time allowed by law;
- 3) That Lane's rate of compensation is \$508.11/\$418.58;
- 4) That Lane suffers from bilateral carpal tunnel syndrome.

ISSUES

The parties requested the Division to determine the following issues:

- 1) Whether Lane's work activities are the prevailing factor in the development of her ongoing carpal tunnel symptoms.

FINDINGS OF FACT AND RULINGS OF LAW

Ms. Lane testified live. Her testimony was credible.

Ms. Lane is a records clerk at the Independence Police Department. Prior to June 2011 her job primarily consisted of taking verbal dictation from police officers and transcribing reports. During her trial testimony she described this work as almost constant typing, at least once relaying that she typed 95 percent of the time. After a change in procedures in June 2011, officers type their own reports and Ms. Lane's job duties changed to proofing officer typewritten reports and a variety of other duties to fill her time including filing, sorting, attending the citizen service window and various office records projects. While much of her time still involved screen use, her actual typing time dropped beginning in June 2011.

Ms. Lane first complained to her supervisor of symptoms that later would be diagnosed as carpal tunnel in late February 2011. She was sent to OHS CompCare and seen by Dr. Palmer on March 1, 2011. She told Dr. Palmer that the symptoms were "worse at night but sometimes it hurts during the day". She was prescribed splints for use which were of limited relief.

Lane was also provided an ergonomic layout of her work station.

Lane continued to have complaints regarding her symptoms. Lane was referred to Dr. Rosenthal in May 2011. Dr. Rosenthal opined after looking at photographs of Ms. Lane's work station and performing medical evaluation that Lane did have carpal tunnel but it was not caused by her work. Dr. Rosenthal opined carpal tunnel is not caused, aggravated or accelerated by typing or computer work. Dr. Rosenthal opined Lane's sleep position might be the cause of her complaints. Dr. Rosenthal concludes that Lane's symptoms are not vocationally related and work is not the prevailing factor in her hand numbness.

Lane was evaluated by Dr. Stuckmeyer who opines that as a direct, proximate and prevailing factor of the repetitive keyboarding performed by Lane while employed with the City of Independence, Lane developed right carpal tunnel syndrome with Guyon's canal entrapment of the ulnar nerve and left carpal tunnel syndrome.

An employee seeking workers' compensation benefits for an occupational disease must present "substantial and competent evidence that he or she has contracted an occupationally induced disease rather than an ordinary disease of life." Kelly v. Banta & Stude Constr. Co., 1 S.W.3d 43, 48 (Mo.App. 1999). Notably, carpal tunnel syndrome is a known occupational disease. Wiele v. National Super Mkts., 948 S.W.2d 142, 146 (Mo.App. 1997). Section 287.067.2 provides that "[A]n injury by occupational disease 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. Ordinary, gradual deterioration, or progressive degeneration of the body caused by aging or by the normal activities of day-to-day living shall not be compensable."

The employee must also establish, the probability that the occupational disease was caused by workplace conditions. Kelly, supra, at p. 48. See also Smith v. Tiger Coaches, Inc., 73 S.W.3d 756 (Mo.App. 2002). Questions regarding causation are issues of fact for the Commission. Sanderson v. Porta-Fab Corp., 989 S.W.2d 603 (Mo.App. 1999). In Smith, supra, the Employee was awarded benefits due to carpal tunnel syndrome which the ALJ determined to be causally related to her work. The Commission affirmed and adopted the ALJ's decision, and on appeal, the Employer argued that the Commission erroneously concluded that any condition involving her hands was related to her employment. Much like the case at bar, two (2) doctors had diagnosed Ms. Smith as having bilateral carpal tunnel syndrome, and those diagnoses were not contradicted. Nor, as in the present case, was there any testimony or evidence that the problems Ms. Smith was experiencing with her hands was due to anything other than carpal tunnel syndrome. Furthermore, as to the issue of causation as to whether the

syndrome was employment-related, the Court noted that "...nothing in the record indicates Employee did anything repeatedly with her hands and arms other than her work washing the exterior and interior of buses for Employer." Therefore, the Missouri Court of Appeals found that the Employee had presented substantial and competent evidence that she contracted an occupational disease, namely, bilateral carpal tunnel syndrome, as the result of her work for her employer. The Court held that the Commission's decision that the employee suffered from bilateral carpal tunnel syndrome medically causally related to her employment with the employer was supported by substantial, competent evidence and was not against the overwhelming weight of the evidence. Similarly, there has been no evidence adduced in the present case that anything but repetitive typing, all day long for five (5) years at the Independence Police Department caused Ms. Lane's carpal tunnel syndrome. Since the "prevailing factor" for an injury under Section 287.020.3 is defined to be the primary factor, in relation to any other factor, causing both the resulting medical condition and disability, arguably there has been no other credible potential causes offered for her carpal tunnel syndrome. There is no persuasive medical support cited by Dr. Rosenthal for the proposition that wrist flexion during sleep is the cause for Ms. Lane's condition.

Dr. Stuckmeyer concludes that from a clinical standpoint, he has seen many situations where individuals who utilize computers all day do develop neurological symptoms in the hands. He opines that as a direct, proximate and prevailing factor of the repetitive keyboarding performed by Ms. Lane while employed with the City of Independence, she developed right carpal tunnel syndrome with Guyon's canal entrapment of the ulnar nerve and left carpal tunnel syndrome. He believes that additional treatment, including electrodiagnostic studies of both the right and left upper extremities and probably surgical intervention are warranted. I find Dr. Stuckmeyer's opinion credible.

Both sides in this dispute agree that Ms. Lane has contracted carpal tunnel syndrome. The substantial, competent evidence supports a determination that Ms. Lane's work for the Independence Police Department is the prevailing factor that has caused her carpal tunnel and cubital tunnel syndromes. Section 287.140.1 provides in pertinent part that:

"[I]n addition to all other compensation paid to the employee under this section, **the employee shall receive and the employer shall provide such medical, surgical, chiropractic, and hospital treatment**, including nursing, custodial, ambulance and medicines, as may reasonably be required after the injury or disability, **to cure and relieve from the effects of the injury.**" (emphasis added).

Based on the testimony of Lane and medical report of Dr. Stuckmeyer I find Lane in need of medical treatment to cure and relieve the effects of her February 28, 2011 occupational disease.

Further diagnostic testing and treatment will be required to "cure and relieve" from the effects of Ms. Lane's injuries. The Employer, the City of Independence, should provide such medical treatment without further delay.

All amounts awarded are subject to attorney's fees of 25 percent in favor of Stuart Wieland for necessary legal services.

Issued by DIVISION OF WORKERS' COMPENSATION
Employee: Kristin Lane

Injury No. 11-014662

Made by: _____
Paula McKeon
Chief Administrative Law Judge
Division of Workers' Compensation