

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

Injury No.: 03-042877

Employee: Alfred Leuthauser  
Employer: Southside Temporaries  
Insurer: American Protection Insurance Co.  
Additional Party: Treasurer of Missouri as Custodian  
of Second Injury Fund  
Date of Accident: Alleged May 1, 2003  
Place and County of Accident: Alleged St. Louis, 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 section 286.090 RSMo, the Commission affirms the award and decision of the administrative law judge dated December 27, 2007, and awards no compensation in the above-captioned case.

The award and decision of Administrative Law Judge Margaret D. Landolt, issued December 27, 2007, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 12th day of June 2008.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

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Alice A. Bartlett, Member

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John J. Hickey, Member

Attest:

\_\_\_\_\_

Secretary

## AWARD

Employee: Alfred Leuthauser

Injury No.: 03-042877

Dependents: N/A

Employer: Southside Temporaries

Additional Party: Second Injury Fund

Insurer: American Protection Insurance Co.

Hearing Date: November 6, 2007

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

Checked by: MDL

### 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: alleged May 1, 2003
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? N/A
8. Did accident or occupational disease arise out of and in the course of the employment?
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 alleged he contracted carpal tunnel syndrome from loading and unloading portable toilets.
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: None
15. Compensation paid to-date for temporary disability: None
16. Value necessary medical aid paid to date by employer/insurer? \$884.61

Employee: Alfred Leuthauser

Injury No.: 03-042877

17. Value necessary medical aid not furnished by employer/insurer? \$9395.00

18. Employee's average weekly wages: \$536.13

19. Weekly compensation rate: \$357.44/340.12

20. Method wages computation: Stipulation

### COMPENSATION PAYABLE

21. Amount of compensation payable: None

22. Second Injury Fund liability: No

Total: None

23. Future requirements awarded: None

## FINDINGS OF FACT and RULINGS OF LAW:

Employee: Alfred Leuthauser

Injury No.: 03-042877

Dependents: N/A

Before the  
**Division of Workers'  
Compensation**

Employer: Southside Temporaries

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

Additional Party: Second Injury Fund

Insurer: American Protection Insurance Co.

Hearing Date: November 6, 2007

Checked by: MDL

### PRELIMINARIES

A hearing was held on November 6, 2007 at the Division of Workers' Compensation in the City of St. Louis. Alfred Leuthauser (Claimant) was represented by Mr. Jeff Estes. Southside Temporaries (Employer) and American Protection Insurance Company c/o Gallagher Bassett (Insurer) were represented by Ms. Loretta Simon. The Second Injury Fund (SIF) was represented by Assistant Attorney General Michael Finneran.

The parties stipulated that: Claimant's average weekly wage was \$536.13, resulting in rates of \$357.44 for Permanent Total Disability (PTD) benefits and \$340.12 for Permanent Partial Disability (PPD) benefits; Claimant was an employee of Employer; venue is proper in the City of St. Louis; and the claim was timely filed. The parties further stipulated Employer paid no TTD benefits, and paid \$884.61 in medical expenses.

The issues for resolution by hearing are: whether Claimant sustained an occupational disease arising out of and in the course of employment; medical causation; liability of Employer for past medical expenses in the amount of \$9,395; liability of Employer to provide future medical treatment; liability of Employer for past TTD benefits for the period between May 14, 2003 and December 19, 2003; nature and extent of PPD; whether Claimant is permanently and totally disabled; and liability of SIF.

## SUMMARY OF EVIDENCE

### *Claimant's Testimony*

Claimant lives in Robertsville, Missouri with his wife, Betty, and two children, ages 10 and 17. Claimant has no other dependents. The family resides in a mobile home on 5 acres. Claimant testified his wife takes care of the yard. Claimant left school at age 16, at which time he was in the 7th grade. Claimant attempted to obtain a GED, but was unable to do so. Claimant is functionally illiterate, and has very little skill in arithmetic. Claimant has a commercial driver's license (CDL) he obtained by taking the written test verbally.

Claimant went to work for Traffic Control Co., when he was 17 or 18, and worked there for approximately 20 years. At Traffic Control, Claimant installed barricades, signs, and warning barrels as needed at road construction sites. One of the other places Claimant worked was Tree Court Builders Supply where he stocked shelves, loaded and unloaded trucks, and made deliveries. Between 2000 and 2002 Claimant did not work. "Johnny on the Spot" or Onyx employed Claimant on an as needed basis from July to December 2002.

Claimant began working for Employer around December 20, 2002. He was assigned to work at "Johnny on the Spot" or "Onyx." Claimant's job was to deliver, service, and pick up portable toilets at construction job sites and special event locations. Claimant continued at this job for the duration of his employment with Employer until May 13, 2003. Claimant reported to Glen Schaefer, who was a supervisor for Johnny on the Spot. Claimant worked 40 hours a week plus overtime.

The portable toilets were around 4 feet square, and had a tank and urinal. They were usually on wood or plastic skids. Claimant estimated when full, a portable toilet weighed 300 to 350 pounds. Claimant drove a truck and trailer with a tank, hose and wand, to service the portable toilets. Claimant testified some trucks had lift gates, but some did not, and if a trailer was attached to the truck, the lift gate could not be used.

Claimant testified in the course of his work, he regularly dragged the toilets from their location to his truck to service them, often across construction sites. Claimant testified to move a toilet, he scooted them from side to side, pulling them towards him, and moved his arms in a back and forth motion. Claimant testified the longest distance he dragged a toilet was about 100 feet.

When delivering or picking up toilets, Claimant stated he generally lifted the toilets and placed them on the truck, or unloaded them from the truck, by himself. Claimant testified most of the time he used a truck without a lift gate.

Claimant testified before going to work for Employer he had no problems with his hands. Nor did he have any problems with his hands during the several months in 2002 when he worked directly for Johnny on the Spot.

Claimant testified he first noticed problems with his hands about two months after he started working for Employer. His hands began getting tired easily, and he noticed this more at night. His hands began to get numb, and fell asleep at night. He began to experience pain in his hands. Claimant testified these symptoms increased with his activity at work and got worse over time. Claimant stated before this, he had no problems with his hands, never received any treatment for his hands, and had never been told he had any nerve related problems or carpal tunnel syndrome.

Claimant testified he reported his hand problems to Glen Schaefer, and to the office staff at Johnny on the Spot. Claimant testified he was not offered any medical treatment, nor did he ask for any, although he thought his problems were work related.

Claimant testified he went to his personal physician, Dr. Vargas, in early May 2003. Dr. Vargas referred him to St. Joseph's Hospital for nerve conduction studies, which confirmed he had carpal tunnel syndrome. Claimant testified he reported this to Johnny on the Spot, and was told to contact Employer, who sent him to Concentra, where

he was given wrist splints. Claimant was also seen by Dr. Rotman, but received no further treatment from Employer despite his request for further treatment.

Claimant testified on or about May 13, 2003, he was informed by Johnny on the Spot that he was no longer needed. Claimant received no other assignments from Employer.

Claimant saw Dr. David Strege who performed bilateral carpal tunnel releases on December 11, 2003. Claimant was eventually released from Dr. Strege's care, and has received no further treatment to his hands or wrists.

Claimant testified he presently has no grip and drops things easily. He has difficulty distinguishing between hot and cold on his fingers bilaterally, and he experiences numbness and tingling. Claimant experienced some improvement from the surgery, but his symptoms persist. Claimant is uncertain how much he can lift.

Claimant testified to various preexisting conditions. In 1992 he injured his neck while lifting a manhole, and continues to have problems with range of motion in his neck. In 1995, he injured his right shoulder while lifting a door onto a truck which resulted in shoulder surgery. Claimant received a workers' compensation settlement following this injury. Claimant testified he re-injured his right shoulder in 1999, this time unloading a truck. Claimant received conservative treatment from Dr. Petkovich. Claimant testified to a variety of ongoing problems referable to his right shoulder. Claimant injured his left knee, which gave out. Both of his knees are painful, and as a result he had to adjust how he worked.

Claimant was diagnosed with breathing problems and sleep apnea in 2000. He treated with Dr. Ojile. He was given inhalers for asthma, and a CPAP machine for sleep apnea. Claimant is often fatigued due to the effects of his breathing problems and sleep apnea.

Claimant was first diagnosed with heart disease in 2002. He underwent a cardiac catheterization in February, 2002 and was diagnosed with congestive heart failure. He was evaluated for a heart transplant at Washington University School of Medicine, but was not eligible due to his weight. Claimant becomes fatigued easily due to his heart condition, and it severely limits the distance he is able to walk. Claimant also testified he has an irregular heartbeat.

Claimant sought vocational rehabilitation, but was told there was nothing available for him.

### ***Brian Williams' Testimony***

Brian Williams is the facility manager for Veolia Environmental Services, the parent company of Johnny on the Spot, and manages its day to day operations. Mr. Williams was Claimant's supervisor during the time Claimant worked at Johnny on the Spot through his job with Employer. Claimant's job was to pick up and service portable toilets. Mr. Williams testified yard personnel generally loaded the vehicles with toilets before the drivers, like Claimant, took them out. Mr. Williams estimated Claimant picked up and loaded between 10 and 12 units a day. Mr. Williams testified pick up trucks have a lift gate, and straight trucks have a lift gate on the passenger side.

Mr. Williams testified an empty portable toilet unit weighed under 200 pounds, and when full about 480 pounds. A full unit was emptied prior to being loaded onto a truck. Mr. Williams stated he has personally moved portable toilet units, and it requires the use of the whole body, including shoulders, back and legs. He stated the toilets are large, but nonetheless fairly easy to move. He estimated the longest distance an individual attempted to move a portable toilet was 30 to 40 feet.

### ***Medical Evidence***

Medical records of Mark W. Wiese, M.D., were admitted into evidence. These records contain a letter from Dr. Wiese to Dr. Vargas dated January 29, 1997. In this letter, Dr. Wiese relates Claimant's complaints of tingling in both hands, worse on the right, which occurs during the daytime, but also at night, awakening Claimant from his sleep. Upon examination Claimant had a mildly positive Tinel's test on the right wrist and a positive Phalen's test.

Dr. Wiese opined that Claimant might be demonstrating mild carpal tunnel syndrome in the right hand. He issued Claimant a wrist brace to wear at night.

Medical records of Ted C. Vargas, M.D., were admitted into evidence. On March 1, 2001 these records document Claimant's complaints of numbness in both hands "all the time for the last month." On January 22, 2002 these records further document Claimant's complaints, of his hands "feeling numb and tingling all the time, at night it is really bad for quite a long time now."

Medical records of Concentra Medical Centers were admitted into evidence. These records contain a report from Mitchell Rotman, M.D., a hand specialist, dated June 2, 2003. Dr. Rotman noted the nerve conduction tests indicated "dramatically elevated" motor latencies, while the EMGs were normal. Dr. Rotman suggested this might be due to Claimant's massive size. He noted Claimant weighed 300 pounds and is 5'8". Dr. Rotman diagnosed Claimant with carpal tunnel syndrome. Dr. Rotman noted Claimant had predisposing factors to carpal tunnel syndrome, most notably obesity. Dr. Rotman indicated Claimant's work activities did not appear to be repetitive in nature. He stated he would not be surprised if some of his activities would "bring out" or exacerbate symptoms. Dr. Rotman opined that given the numbers on Claimant's nerve studies, his carpal tunnel syndrome had been "coming on for the last 10-15 years." Dr. Rotman stated Claimant would definitely require bilateral carpal tunnel releases. Dr. Rotman stated Claimant's bilateral carpal tunnel syndrome "is more related to his intrinsic body habitus than anything else."

Medical records of David Strege, M.D. were admitted into evidence. Dr. Strege, the treating physician, offered no opinion on the cause of Claimant's bilateral carpal tunnel syndrome.

David Brown, M.D., testified on behalf of Employer. Dr. Brown examined Claimant on July 28, 2004. Dr. Brown is board certified by the American Board of Plastic Surgery, with a subspecialty of surgery of the hand. Dr. Brown regularly performs carpal tunnel surgeries. Dr. Brown opined Claimant's employment with Employer is not a substantial causative factor in the development of Claimant's bilateral carpal tunnel syndrome. He also testified Claimant's job duties were not a substantial factor in aggravating Claimant's carpal tunnel syndrome. Dr. Brown testified Claimant's carpal tunnel syndrome was more likely related to his significant nonoccupational risk factors including diabetes<sup>[1]</sup>, hypothyroidism, obesity and smoking. Claimant clearly expressed to Dr. Brown he had symptoms for at least two years prior to becoming employed at Employer, during which time he did not work. This suggested to Dr. Brown that Claimant's medical conditions were the substantial cause of his carpal tunnel syndrome. Dr. Brown did not consider Claimant's work for Employer to be a repetitive job. Dr. Brown testified repetitive work is doing the same activities with your hands repeatedly in a short period of time. In Claimant's case, the activities varied, there were rest intervals, and the amount of items dealt with in a period of a day were of a relatively low number. In addition, Claimant's nerve conduction studies from May 2003 confirmed Claimant had severe carpal tunnel syndrome with distal motor latencies more than double what a normal value would be, consistent with chronic severe carpal tunnel syndrome that had been present for several years, not carpal tunnel syndrome that may have evolved over a five to six month time period. Dr. Brown opined Claimant had sustained no PPD referable to his wrists that could be attributed to his employment with Employer.

Shawn L. Berkin, D.O. testified on behalf of Claimant. Dr. Berkin examined Claimant on November 18, 2004. Dr. Berkin opined that the activities Claimant performed during the course of his employment for Southside Temporaries were a substantial factor in causing Claimant's bilateral carpal tunnel syndrome. Dr. Berkin rated Claimant with a PPD of 40% of each wrist, and suggested a loading factor be applied due to the bilateral nature of these disabilities.

With regard to conditions preexisting May, 2003, Dr. Berkin rated Claimant with the following PPD: 35% of the right shoulder; 15% of the left knee; 60% of the body as a whole referable to cardiomyopathy; 20% of the body as a whole referable to sleep apnea and chronic obstructive pulmonary disease; and 10% of the body as a whole referable to morbid obesity. Dr. Berkin opined Claimant is incapable of competing for or maintaining employment in the open labor market due to the combined effect of his various disabilities, age and limited education, and is permanently and totally disabled.

Dr. Berkin testified he is board certified in family medicine, and has no surgical board certifications. He has

never performed a carpal tunnel surgery. Dr. Berkin admitted that an accurate and complete history is significant in the process of an independent medical examination, in order to accurately determine causation and arrive at the diagnosis. Dr. Berkin relied on Claimant's denial of any history of hand symptoms in drawing his conclusions about causation. Dr. Berkin stated in his report that he did not review any records to indicate Claimant had any symptoms or received any treatment for his hands prior to his employment with Employer. Dr. Berkin acknowledged Claimant's history as reported to him, was inconsistent with the history Claimant gave to Brown. Dr. Berkin stated he was not aware that on March 1, 2001 Claimant told Dr. Vargas he had been experiencing numbness in both hands for the past month. Dr. Berkin stated he was not aware that on January 22, 2002, Claimant told Dr. Vargas his hands were feeling numb and tingling all the time, especially at night.

### ***Vocational Evidence***

James M. England, Jr. testified on behalf of Claimant. Mr. England, a vocational rehabilitation counselor, performed a vocational rehabilitation evaluation of Claimant based upon a personal interview, medical records review, and vocational testing. Mr. England opined Claimant's combination of medical problems rendered him totally disabled, and Claimant was likely to remain totally disabled from a vocational standpoint.

### **RULINGS OF LAW**

To support a finding of occupational disease, a claimant must provide substantial and competent evidence that he contracted an occupationally induced disease rather than an ordinary disease of life. *Hayes v. Hudson Foods*, 818 S.W. 2d 296, 299-300 (Mo.App.1991). Overruled in part by *Hampton v. Big Boy Steel Erection* 121 S.W. 3d 220 (Mo. 2003). The claimant must prove there is a recognizable link between the disease and some distinctive feature of the employee's job which is common to all jobs of that sort. *Polavarapu v. General Motors Corp.*, 897 S.W. 2d 63, 65 (Mo.App.E.D.1995). A claimant must also establish, generally through expert testimony, the probability that the claimed occupational disease was caused by conditions in the work place. *Dawson v. Associated Electric*, 885 S.W. 2d 712, 716 (Mo. App. W.D. 1994). Overruled in part by *Hampton v. Big Boy Steel Erection* 121 S.W.3d 220 (Mo. 2003). A claimant must prove a "direct causal connection between the conditions under which the work is performed and the occupational disease." *Webber v. Chrysler Corp.*, 826 S.W. 2d 51, 54 (Mo. App. 1992). Overruled in part by *Hampton v. Big Boy Steel Erection* 121 S.W.3d 220 (Mo. 2003). When the medical opinions of experts are in conflict, the fact finder determines which opinion is the most credible. *Hawkins v. Emerson Electric Co.*, 676 S.W. 2d 872, 877 (Mo. App. 1984). Where there are conflicting medical opinions, the fact finder may reject all or part of one party's expert testimony which it does not consider credible and accept as true the contrary testimony given by the other party's expert. *George v. Shop-N-Save Warehouse Foods, Inc.*, 855 S.W. 2d 460, 462 (Mo. App. E.D. 1993).

The outcome of this case turns on the medical expert evidence. I find Dr. Brown's opinions on causation far more convincing than those of Dr. Berkin. Dr. Brown, a board certified plastic surgeon with a subspecialty in hand surgery, regularly treats carpal tunnel syndrome patients. Dr. Berkin, a family practice physician, has no expertise in the treatment of carpal tunnel syndrome, and has never performed a carpal tunnel surgery. Dr. Brown's opinions are based upon a history consistent with the medical records in evidence. Dr. Berkin's opinions are based upon a history he admits is inconsistent with the medical records in evidence. Dr. Brown's interpretation of the results of Claimant's nerve conduction studies are credible and establish the onset of Claimant's severe, chronic carpal tunnel syndrome occurred well before his employment with Employer. Claimant's employment at Employer was not a substantial factor in causing or aggravating Claimant's carpal tunnel syndrome.

Claimant has failed to provide substantial and competent evidence he sustained an occupationally induced disease rather than an ordinary disease of life. Claimant failed to prove his claimed occupational disease was caused in substantial part by his work while employed by Employer. As Claimant has failed to establish medical causation, all remaining issues are moot.

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

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

Margaret D. Landolt  
*Administrative Law Judge*  
*Division of Workers' Compensation*

A true copy: Attest:

\_\_\_\_\_  
*Jeffrey W. Buker*  
*Director*  
*Division of Workers' Compensation*