

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

Injury No.: 04-071664

Employee: Lisa Marcinkiewicz
Employer: Dave Sinclair Lincoln Mercury
Insurer: Missouri Automobile Dealers Association
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 (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 September 5, 2008. The award and decision of Administrative Law Judge Matthew D. Vacca, issued September 5, 2008, 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 28th day of January 2009.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

John J. Hickey, Member

Attest:

Secretary

AWARD

Employee: Lisa Marcinkiewicz Injury No.: 04-071664
Dependents: N/A Before the
Employer: Dave Sinclair Lincoln Mercury **Division of Workers'**
Compensation
Department of Labor and Industrial
Additional Party: Second Injury Fund Relations of Missouri
Jefferson City, Missouri
Insurer: Missouri Automobile Dealers Association
Hearing Date: June 18, 2008 Checked by: MD:cw

FINDINGS OF FACT AND RULINGS OF LAW

1. Are any benefits awarded herein? Yes
 - 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
 - Date of accident or onset of occupational disease: 2004
 - State location where accident occurred or occupational disease was contracted: St. Louis, County
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
 - 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: Developed carpal tunnel syndrome while performing clerical work.
12. Did accident or occupational disease cause death? No Date of death?
13. Part(s) of body injured by accident or occupational disease: Both upper extremities
 - Nature and extent of any permanent disability: 17.5% each wrist 10% load and 4 week scarring

15. Compensation paid to-date for temporary disability: \$0
16. Value necessary medical aid paid to date by employer/insurer? \$0

Employee: Lisa Marcinkiewicz

Injury No.: 04-071664

17. Value necessary medical aid not furnished by employer/insurer? \$0

- Employee's average weekly wages: \$134.62

19. Weekly compensation rate: \$89.74 /\$260.00

20. Method wages computation: 30 hour rule/agreed

COMPENSATION PAYABLE

- Amount of compensation payable:

65.35 weeks of permanent partial disability from Employer	\$16,991.00
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22. Second Injury Fund liability: Open

weeks of permanent partial disability from Second Injury Fund

Uninsured medical/death benefits

Permanent total disability benefits from Second Injury Fund:
weekly differential () payable by SIF for weeks beginning
and, thereafter, for Claimant's lifetime

Total: \$16,991.00

- 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 25% of all payments hereunder in favor of the following attorney for necessary legal services rendered to the claimant: Mike Vogt

FINDINGS OF FACT and RULINGS OF LAW:

Employee:	Lisa Marcinkiewicz	Injury No.: 04-071664
Dependents:	N/A	Before the Division of Workers' Compensation
Employer:	Dave Sinclair Lincoln Mercury	Department of Labor and Industrial Relations of Missouri
Additional Party:	Second Injury Fund	Jefferson City, Missouri
Insurer:	Missouri Automobile Dealers Association	Checked by: MD:cw

ISSUES PRESENTED

The issues presented for resolution at the hearing were occupational disease, medical causation, and the nature and extent of any permanent disability. There are two injury numbers, 04-147627 and 04-071664. They are the identical claim. For administrative purposes, two awards are issued, but there is only one liability.

FACTS

1. Claimant began working for Dave Sinclair Ford the Employer herein for 15-20 hours a week part-time. When Claimant began working for Dave Sinclair Ford she had no pain in her left or right wrist and no discomfort.
2. Claimant worked part time until January 1999, and there after became a full time employee from 1999 to 2001, and part-time until 2004.
3. Claimant's duties were to process service invoices, file repairing and warranty paper work, take phone calls, return phone calls, work 2 hours a day on the computer, and 3 to 4 hours a day filing. Claimant worked with her hands fulltime everyday. Claimant was filing, typing or on the phone all day long. Claimant's position was as an executive assistant to James Sinclair. Claimant would handle all of his typing, correspondence, and follow up on complaints. Claimant worked five days a week 8 hours a day, working at the computer 4 to 5 hours, and filing 4 to 5 hours.
4. In 2001, Claimant resumed part-time work again following a brief maternity leave. Claimant had the same duties but worked less hours, the job was flexible and Claimant could take breaks. Claimant took a maternity leave for 12 weeks in 2001 and returned to work until June 2004 until she was laid off. Claimant has two children ages 5 and 7.
5. Claimant first noticed pain in both her wrists in 1998 and 1999. Claimant began to notice tingling in her hands that occurred at night but then started increasing until it hurt all day long. Claimant is right handed and the right side was worse. The first treatment was after Claimant was laid off. Claimant was referred to Dr. Brown in 2004. Claimant gave him a history of six years of pain and discomfort in her wrists. Dr. Brown did a carpal tunnel release on the right and left wrist.
6. Dr. Brown sent Claimant to talk to Dr. Peebles who did a nerve conduction study. Claimant had physical therapy after surgery in Des Peres. Dr. Schlasfly gave a second opinion regarding the case.

7. Now Claimant has difficulty and pain when she cuts the grass or hedges around the yard, or when she pushes the stroller. The pain subsides when she stops. Nothing is particularly more difficult, anything can cause pain.
8. After the surgery, Claimant does not have any pain. The surgery definitely helped. Claimant believed that pain developed predominately when she worked full-time. The tasks of typing, writing, straightening papers, and filing caused the most pain.
9. Claimant has two children ages 5 and 7. Claimant worked at two different Sinclair operation locations. Claimant work at the Ford location from 1996-1998, working 15 hours a week, five days, 3 to 4 hours a day from 5pm to 9pm. Claimant worked at the Lincoln location full-time from 1999 to May 18, 2001 and part-time until she was laid off.
10. While Claimant worked full-time at the Lincoln location she would do filing, typing, cashiering, customer responses, service copies, and repair documents while working with a couple hundred papers a day. Including service papers, warranty claims and other associated documents. Claimant would often work as a cashier, checking out customers for 2 to 3 hours, including checking their time on the computer, service orders, coordinating documents, collecting money, spending 3 to 10 minutes per customer. Claimant would perform follow up phone calls on satisfaction complaints, make notes of the conversation, inputting into the computer for several hours a day. Claimant would take appointments, answer the phones, refer calls to the service desk, and perform preliminary work such as taking the customer's name, date, and the problem with their automobile, handling 20 to 50 calls a day. Claimant would type personal letters for Mr. Sinclair. Mr. Sinclair would give Claimant notes on scrap paper then Claimant would type it, draft it and retype the letters. Claimant spent 2 ½ years on full-time job. Claimant first reported her hand pain to the Employer after she saw Dr. Brown.
11. Dr. Ollinger does not believe Claimant's work was sufficiently hand intensive to cause carpal tunnel syndrome and therefore doesn't believe that Claimant's work was a prevailing factor in the cause of the Claimant's carpal tunnel disease. Dr. Schlafly believes that Claimant's work typing and filing was sufficiently active that it was the prevailing factor in causing the carpal tunnel syndrome. Dr. Brown, the treating physician provided no causation opinion.
12. Dr. Ollinger believes Claimant sustained a 2% permanent partial disability as a result of the carpal tunnel syndrome. Dr. Schlafly believes that Claimant's carpal tunnel syndrome caused a 27.5% permanent partial disability in each hand with a loading factor.
13. Dr. Ollinger believes that Claimant is one of the 3% of the population who contracts carpal tunnel syndrome for no apparent reason and therefore terms the condition idiopathic.

RULINGS OF LAW

1. Claimant has sustained an occupational disease which arose out of in the course of her work at Dave Sinclair. That occupational disease being substantially caused by her hand intensive work at Dave Sinclair, with the work being the substantial factor in causing the injury and causing her need for surgery and the disabling condition.
2. Claimant has sustained a 17 ½% permanent partial disability measured at the level of each wrist with a 10% factor to be applied for the multiplicity of injuries.
3. Claimant was an extremely incredible witness. She was a non whiner who testified in a direct and forth right manner. Claimant's testimony was believable.

DISCUSSION

I decide this case on the law in effect on April 30, 2004, the date of the injury claim. I use the substantial factor test for causation, pre-2005 amendments. Claimant's testimony was that she performed substantial hard intensive tasks and I believe Dr. Schlafly that these tasks were the substantial factor in the development of her carpal

tunnel syndrome.

Date: _____

Made by: _____

Matthew D. Vacca
Administrative Law Judge
Division of Workers' Compensation

A true copy: Attest:

Jeffrey W. Buker
Director
Division of Workers' Compensation

Issued by THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

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

Injury No.: 04-147627

Employee: Lisa Marcinkiewicz

Employer: Dave Sinclair Lincoln Mercury

Insurer: Missouri Automobile Dealers Association

Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund (Open)

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Dependents:	N/A	Before the	
Employer:	Dave Sinclair Lincoln Mercury	Division of Workers'	
Additional Party:	Second Injury Fund	Compensation	
Insurer:	Missouri Automobile Dealers Association	Department of Labor and Industrial	
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Date: _____

Made by: _____

*Administrative Law Judge
Division of Workers' Compensation*

A true copy: Attest:

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