

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

Injury No.: 03-107640

Employee: Gary McCurter

Employer: Cassens Transport Company

Insurer: Self c/o Crawford & Co.

Date of Accident: Alleged July 15, 2003

Place and County of Accident: Contract of hire in St. Louis County

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 January 20, 2005, and awards no compensation in the above-captioned case.

The Commission finds that the administrative law judge correctly weighed and evaluated the lay and medical testimony in reaching his conclusions as to the issues presented. The Commission finds that the administrative law judge correctly determined that employee's employment was not a substantial factor in the development of his medical condition. *Reese v. Gary & Roger Link, Inc.*, 5 S.W.3d 522 (Mo. App. E.D. 2002), *Sullivan v. Masters Jackson Paving Co.*, 35 S.W.3d 879 (Mo. App. S.D. 2001), *Landman v. Ice Cream Specialties, Inc.*, 107 S.W.3d 240 (Mo. banc 2003).

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

Given at Jefferson City, State of Missouri, this 23rd day of August 2005.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

William F. Ringer, Chairman

Alice A. Bartlett, Member

DISSENTING OPINION FILED

John J. Hickey, Member

Attest:

Secretary

DISSENTING OPINION

I respectfully dissent from the opinion of the majority of the Commission. I would find the claim compensable and reverse the administrative law judge.

The administrative law judge and the majority rely on the opinions of Dr. Coin in determining that employee's employment did not involve sufficient repetitive actions to be causative of the condition of carpal tunnel syndrome. Dr. Coin, in fact, agreed with that diagnosis and recommended surgery to cure and relieve. Dr. Coin testified that employee did have continuous, heavy repetitive use of his hands. Dr. Coin maintained his opinion that employee's job was not hand intensive enough to be causative even as he testified that he did not measure the vibration to which employee was exposed. Dr. Coin did no research into the question of truck driving as a cause of carpal tunnel. Employee presented publications from Rehabilitation Medicine, the May Clinic health letter, the National Institute of Medicine and the Carpal Tunnel Syndrome Newsletter all containing articles linking truck driving to the development of carpal tunnel syndrome.

I would not accept the conclusions of Dr. Coin. To me, the opinions of Dr. Shaefer and Dr. Swango are the more persuasive. These physicians testified that Employee's job, which was hand intensive and exposed him to the vibration risk of truck driving, was a significant factor in the development of his carpal tunnel syndrome. Accordingly, the condition would be compensable under Sec. 287.067.7 RSMo.

In his rulings of law, the administrative law judge provides us with a bold medical conclusion involving the medical condition resulting from repetitive trauma. We are informed that that condition is tenosynovitis, not carpal tunnel syndrome. The source of this conclusion is not indicated and is nowhere to be found in the record. Obviously, the administrative law judge is taking the opportunity of this award to share his own views and conclusions. I consider this to be improper.

The administrative law judge makes mention of "the three month rule." This rule has no bearing on this case and allusions to the rule have no place in this decision.

The administrative law judge enlightens us further with a definition of ergonomics. It is one thing to interject material which is not in the case but quite another to interject material which is incorrect. Mr. Webster's dictionary advises that ergonomics is the "applied science of equipment design intended to reduce operator fatigue and discomfort." The administrative law judge, however, seems to equate exposure with ergonomics. A conclusion without foundation.

The administrative law judge advises that because employee "endured the exposures" of repetitive trauma for years before the manifestation of symptoms the condition does not meet the statutory requirement. What statute requires sudden onset of repetitive motion injury?

The administrative law judge advised that no expert has identified the period of "latency", during which employee is exposed to repetitive trauma and before the development of symptoms, as being medically recognized. Apparently, the administrative law judge did not notice the testimony of his adopted expert, Dr. Coin. Dr. Coin testified that a reasonable medical assessment of repetitive trauma, viewed on a gross basis, would be a "small insult or trauma to the hands on a daily basis over a lengthy period of time until the patient becomes symptomatic." To the extent that the administrative law judge's denial is based on his contrary conclusion, it is plainly wrong.

John J. Hickey, Member

AWARD

Employee: Gary McCurter Injury No.: 03-107640

Dependents: N/A

Before the
Division of Workers'

Employer: Cassens Transport Company

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

Additional Party: N/A

Insurer: Self-Insured

Hearing Date: October 27, 2004 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? Yes
11. Describe work employee was doing and how accident occurred or occupational disease contracted: N/A
12. Did accident or occupational disease cause death? N/A 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: Gary McCurter Injury No.: 03-107640

17. Value necessary medical aid not furnished by employer/insurer? N/A
18. Employee's average weekly wages: \$1,221.45
19. Weekly compensation rate: \$662.55/\$347.05
20. Method wages computation: Stipulation.

COMPENSATION PAYABLE

21.Amount of compensation payable: None

22. Second Injury Fund liability: No

TOTAL: -0-

23. Future requirements awarded: None

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 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 Claimant:

N/A

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Gary McCurter

Injury No.: 03-107640

Dependents: N/A

Before the
Division of Workers'

Employer: Cassens Transport Company

Compensation

Additional Party: N/A

Department of Labor and Industrial

Relations of Missouri

Jefferson City, Missouri

Insurer: Self-Insured

Checked by: JED:tr

This case involves a disputed repetitive motion trauma to the hands resulting to Claimant in 2003 after eleven

years on the job. Employer admits Claimant was employed at all times relevant and that any liability was fully self-insured. The Second Injury Fund ("SIF") is a party to this claim. Both parties are represented by counsel.

Issues for Trial

1. Incidence of Occupational Disease;
(exposure & medical causation);
2. Costs under Section 287.560 RSMo (2000).

FINDINGS OF FACT

Claimant's Testimony

Claimant has been a car hauler for the Employer since 1992. He loads cars out of the Fenton, Missouri terminal and delivers them to car dealerships. To load the cars on the truck, he will use four chains to secure the cars to the truck. His auto transport holds seven trucks, nine vans or eleven cars which are secured by four chains. He usually hauls trucks or vans. For trucks, he will use 28 chains, 38 chains for vans, and 44 chains for cars.

Once the load is secured, he then drives to dealerships within a 300 to 500 mile radius delivering one to two cars per dealer. There is a quick release ratchet which is used to release the chains when he delivers the cars. While driving the car hauler, he claimed a felt a lot of vibration while driving. The truck he uses has power steering.

In the unloading process, he uses the quick release ratchet to release the chains, and then backs the cars off of the car hauler for delivery at the dealership. If the vehicles are loaded in the proper sequence, then he is able to deliver the cars in reverse order as they were loaded.

Treatment Record

Sometime more than two years ago, Claimant felt tingling and numbness in his arms and hands although he could not recall the year or the month this began. He believed he saw a Dr. Ginsberg who referred him to Dr. Brown. The medical records indicate that he was actually referred to Dr. Brown for a right elbow injury in 2002. On May 21, 2002, the new patient questionnaire completed by Claimant for Dr. Brown listed only complaints to the right hand and left elbow. There were no complaints regarding the left hand or wrist, contrary to Claimant's trial testimony (Exhibit D, patient questionnaire page 3).

Opinion Evidence

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Dr. James Shaeffer

The employee came under the care of Dr. Shaeffer for a left elbow injury occurring on January 2, 2003. During the course of his treatment for his elbow injury, Dr. Shaeffer testified that Claimant complained to him of numbness and tingling in his hands.

Dr. Shaeffer noted that he had taken a history from Claimant that he drove a car hauler for eight to ten hours a day. In his opinion Claimant's holding of the steering wheel during driving while the truck was vibrating and the shifting of the gears of the truck were factors that supported his opinion that Claimant's bilateral carpal tunnel syndrome was related to his work for the Employer. Dr. Shaeffer's understanding of the job duties was contradicted by Claimant's driving logs and analysis of the job (Exhibit 6 and 10). Employer was not provided a written request per Dr. Schaeffer to provide treatment for the bilateral carpal tunnel conditions.

No ergonomics were defined.

Dr. J. Scott Swango

The Employee also was examined on August 23, 2004 at the Employee's counsel's request although Dr. Swango is of the same medical specialty as Dr. Shaeffer. Dr. Swango was of the opinion that Claimant sustained bilateral carpal tunnel syndrome from his work for Employer. Dr. Swango admitted to idiopathic carpal tunnel cases in 30% of the cases he has treated. Dr. Swango had a limited understanding of Claimant's work and the history of driving eight to ten hours on a daily basis is contradicted by Claimant's driving logs and his own trial testimony (Exhibit 10). No ergonomics were defined.

Mr. Tim Knox

Mr. Tim Knox performed an ergonomics study of the car hauler position on behalf the Employer (Exhibit 6). He noted the tie down bar was used with the wrist in a neutral position, noted the number chains used to tie down the cars, and actually accompanied one of the drivers on a delivery of vehicles. Mr. Knox's observations are consistent with Claimant's trial testimony in that both Claimant and Mr. Knox testified that the tie down bar was held with the wrist in a neutral position which would not put enough stress on the wrist to give rise to carpal tunnel syndrome.

Dr. Richard Coin

Claimant was also evaluated by Dr. Richard Coin on behalf of the Employer on March 16, 2004. Dr. Coin has been used as an impartial medical expert in at least one other prior case involving carpal tunnel complaints and this Employer (Exhibit 12). Dr. Coin testified that he had reviewed many of Claimant's medical records, including the records of Dr. Shaeffer. He also testified that he reviewed the Safety and Wellness Training Manual from Employer and a job description of a car hauler and also the report of Timothy Knox from Loss Prevention Consultants. Dr. Coin testified regarding the specific work duties of Claimant as far as his duties in tying down the cars with chains and a ratchet and the unloading of the cars off of the trailer.

It was Dr. Coin's opinion after reviewing the Safety Training Manual and the job description as well as the history from the patient that if carpal tunnel syndrome was confirmed that the carpal tunnel syndrome would not be work related. Dr. Coin based this on the fact that Claimant spends the majority of his time driving the truck and that Claimant's use of his hands is not significant enough during the day to cause the development of carpal tunnel syndrome. Dr. Coin supported his position with a review of Tim Knox's report regarding the physical stresses to which a car hauler is exposed.

Dr. Coin explained that a heavy level of vibration such as someone using an air hammer or a jackhammer six to eight hours a day all day long day in and day out, could cause carpal tunnel syndrome. The level of vibration that Claimant is exposed to would not come close to the level of vibration sufficient to be a cause or a factor in the development of bilateral carpal tunnel syndrome.

RULINGS OF LAW

Occupational Disease:
Exposure and Medical Causation

The Missouri WC law permits recovery for symptoms that result from the workplace under the category of occupational disease if the symptoms are the result of "repetitive motion." Section 287.067.7 RSMo (2000). Typically, this manifests as joint symptoms of the hands, elbows and sometimes shoulders. The medical condition of the hands, for example, resulting from repetitive motion trauma, is called tenosynovitis, not carpal tunnel syndrome, per se.^[1] Thus, the legislature limits employer liability for hand symptoms to those cases in which the symptoms result only from "repetitive motion." *Id.* In the same subsection, the legislature imposes the "three month" rule to insulate successive employers from repetitive motion exposures sustained at prior employers.^[2] This exposure to repetitive motion must be proven like any other element of Claimant's case.

The science of work place exposure is called ergonomics.^[3] Ordinary diseases of life, not traceable to the workplace, are not compensable under the WC law. Section 287.067.1 RSMo (2000). Thus, in order to recover for repetitive motion, Claimant must prove an exposure (to repetitive motion) in the work place that caused the symptoms. Pain and inability to work is not an evidentiary proof of medical causation. Aggravation of symptoms is not proof that the alleged repetitive activity is a substantial cause. Common sense dictates that many types of activity imposed on sore tissue will aggravate symptoms but this does not also mean that the imposed activity is the *cause* of the pathology (or that an aggravation is permanent).

Claimant's testimony was credible but not probative of medical causation. Medical causation, which is not within the common knowledge or experience of lay understanding, must be established by scientific or medical evidence showing the cause and effect relationship between the complained of condition and the asserted cause. McGrath v. Satellite Sprinkler's Sys., 877 S.W.2d 704, 708 (Mo. App. 1994). Here, Claimant's exposure to driving is undisputed. The exposure, as a full-time driver, was essentially unchanged since 1992. However, despite constant exposure to the alleged repetitive motion, Claimant's first symptoms manifest after more than ten years on the job. Although Claimant presented two experts on causation, Claimant's position is untenable for several reasons.

Here, the work exposure is characterized as very much self-paced, not repetitive, and the wrists are held in the neutral position. At trial, Claimant testified that the tie down bar he used to chain down the cars was held with his wrist in a neutral position similar to that when one shakes hands. In addition, the process of tying down the cars is a small part of the loading process and, in fact, the securing of the chains for each car consisting of from 28 to 44 chains would take place over a one and one half to three hour period. This could hardly be considered repetitive work.

Furthermore, Claimant sought to enter into evidence a list of claims involving prior employees who have alleged carpal tunnel injuries while working for Employer (Exhibit H). Evidence of prior carpal tunnel claims is relevant only if the Employer is taking the position that, due to the lack of prior claims, the job cannot cause carpal tunnel syndrome. The Employer is not defending this case on the basis that no prior claims have been made against it and, therefore, this evidence is not relevant. It is noted that, according to Claimant, there are 250 to 300 other drivers at the Employer's Fenton, Missouri terminal who performs the exact same job which Claimant performs. However, of all the other drivers at the facility, only eight have submitted claims alleging carpal tunnel complaints and of those eight only two claims have been paid. One of those two claims was due to a traumatically induced carpal tunnel condition. Therefore, the evidence which Claimant uses to argue in an attempt to show that the employment causes carpal tunnel complaints suggests a contrary conclusion.

As with all proofs in complex medical evidence, 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). Any weakness in the underpinnings of an expert opinion goes to the weight and value thereof. Hall v. Brady Investments, Inc., 684 S.W.2d 379 (Mo.App. 1984).

Here, neither of Claimant's experts had a credible grasp of the necessary ergonomic measurements that must be predicated before rendering a causation opinion. This contrasts in significant part with Dr. Coin's testimony. Job descriptions and lay testimony are not substitutes for these scientific measurements. Employer proffered the unrebutted testimony of a risk consultant which is competent and probative. His testimony was well founded and he did not exceed the scope of his expertise or investigation. See Sigrist By and Through Sigrist v. Clarke, 935 S.W.2d 350, 357 (Mo. App. 1996).

The onset of symptoms is too remote from the commencement of the alleged exposure to repetitive motion. The credible opinion evidence together with the illogic that Claimant endured the exposures for years and suddenly, in 2003, manifests a work related repetitive trauma compels a finding that his condition does not meet the statutory repetitive motion criteria and, thus, cannot be found to be work related by law.^[4]

Finally, Claimant was unsure as to the onset of his complaints and, by his own admission, the complaints did not arise at the same time in either hand. If the complaints were from the employment, one would expect complaints to arise in both hands at least somewhat concurrently.

Conclusion

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:

Gary J. Estenson
Acting Director
Division of Workers' Compensation

[\[1\]](#) While treatment involves examination of the carpal ligament and the structures bound within it, classic carpal tunnel *syndrome* is a compression or entrapment that presents idiopathically or, irrespective of “repetitive motion,” in conjunction with chemical imbalances. For example, it is medically correct to say, as many hand surgeons have testified, that an employee with work related bilateral surgical releases (of the carpal ligament) does not technically have “carpal tunnel syndrome.”

[\[2\]](#) The subsection anomalously presumes consecutive employments without instance of unemployment gaps.

[\[3\]](#) The ergonomics of a repetitive motion in the work place is defined in terms of position, duration or force and repetitions. These factors are identified, measured and quantified and, thereby, become the foundation for an opinion that work duties constitute a “repetitive motion” that cause a compensable injury.

[\[4\]](#) No expert identified such latency as recognized in repetitive trauma medicine. Also, such latency is contrary to the legislative history underlying the promulgation of the *90 day* (“three month”) *rule* found in subsection 7 (cited above).