

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

Injury No.: 08-123645

Employee: Manfred Meadows
Employer: John Bender
Insurer: Seabright Insurance Company

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 March 22, 2012.

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 Administrative Law Judge Kathleen M. Hart, issued March 22, 2012, is attached and incorporated by this reference.

Given at Jefferson City, State of Missouri, this 3rd day of July 2012.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

V A C A N T
Chairman

James Avery, Member

Curtis E. Chick, Jr., Member

Attest:

Secretary

TEMPORARY OR PARTIAL AWARD

Employee: Manfred Meadows

Injury No.: 08-123645

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: John Bender

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

Additional Party: None

Insurer: Seabright Insurance Company

Hearing Date: January 4, 2012

Checked by: KMH

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: on or about March 20, 2008
5. State location where accident occurred or occupational disease contracted: St. Louis
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 happened or occupational disease contracted: Claimant injured his neck and body as a whole as a result of repetitive lifting at work.
12. Did accident or occupational disease cause death? No Date of death? n/a
13. Parts of body injured by accident or occupational disease: Neck and body as a whole
14. Compensation paid to-date for temporary disability: None
15. Value necessary medical aid paid to date by employer/insurer? None
16. Value necessary medical aid not furnished by employer/insurer? unknown

Employee: Manfred Meadows

Injury No.: 08-123645

- 17. Employee's average weekly wages: unknown
- 18. Weekly compensation rate: \$742.72/\$389.04
- 19. Method wages computation: Stipulation

COMPENSATION PAYABLE

20. Amount of compensation payable:

future temporary total or temporary partial disability	*
future medical care	**
TOTAL:	* **

(use of an asterisk (*) denotes an uncertain contingent future benefit)

Each of said payments to begin immediately and be subject to modification and review as provided by law. This award is only temporary or partial, is subject to further order, and the proceedings are hereby continued and the case kept open until a final award can be made.

IF THIS AWARD IS NOT COMPLIED WITH, THE AMOUNT AWARDED HEREIN MAY BE DOUBLED IN THE FINAL AWARD, IF SUCH FINAL AWARD IS IN ACCORDANCE WITH THIS TEMPORARY AWARD.

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:

Lynn Barnett

FINDINGS OF FACT and RULINGS OF LAW:

Employee: Manfred Meadows

Injury No.: 08-123645

Dependents: n/a

Before the
**Division of Workers'
Compensation**

Employer: John Bender

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

Additional Party: None

Insurer: Seabright Insurance

Checked by: KMH

A hearing was held on the above captioned matter January 4, 2012. Manfred Meadows (Claimant) was represented by attorney Lynn Barnett. John Bender (Employer) was represented by attorney Jennifer Weller. The Second Injury Fund was left open.

Claimant alleges he needs additional medical treatment related to injuries sustained from repetitive work leading up to March 2008 and a work accident in July 2009. Employer denies liability for further treatment.

STIPULATIONS

The parties stipulated to the following:

1. Venue is proper in St. Louis
2. Employer and Claimant were operating under the provisions of the Missouri Workers' Compensation law.
3. Employer's liability was fully insured by Seabright Insurance.
4. A claim for compensation was timely filed.
5. Claimant's rates for TTD and PPD are \$742.72 and \$389.04 respectively.
6. Employer has paid no TTD or medical benefits to date.

ISSUES

The parties stipulated the issues to be resolved are as follows:

1. Occupational Disease
2. Medical Causation
3. Future medical care
4. Future temporary total disability
5. PPD
6. Employer raised notice as an issue. Claimant objected as a notice defense was not pled in Employer/Insurer's Answer to Claim, and had not been asserted until the date of hearing.

FINDINGS OF FACT

Based on the competent and substantial evidence, my observations of Claimant at trial, and the reasonable inferences to be drawn therefrom, I find:

1. Claimant is a 38 year-old, married male who has worked as a carpenter for Employer nearly 15 years. He works with drywall, wood, insulation, cabinets, doors, door frames, trim material, and many other construction supplies and power tools on a daily basis. When installing materials, Claimant often holds them at shoulder level and overhead. His duties also include working with metal framing studs that come in different sizes and weigh from five to two hundred pounds.
2. In January 2008, Claimant became an Estimator for Employer. He was not in the field as much, and spent most of his time in the office estimating jobs. He climbed ladders and performed some physical work when he went into the field to review jobs. Claimant testified he had neck pain when climbing ladders and when looking down at his desk. Claimant worked as an Estimator for one year and then returned to work in the field.
3. Claimant testified he had no neck injuries or complaints prior to 2007. His testimony was unrefuted and is corroborated by his prior medical records. In December 2007, he developed pain at the base of his neck on the left side. Claimant told his supervisor, Todd Bender, that he had neck pain and was going to take care of it himself without filing a workers' compensation claim. He went to his chiropractor, who ordered x-rays January 4, 2008, to evaluate his complaints of neck pain. She did not provide treatment for Claimant's neck, and referred him to his primary care physician, Dr. Kairuz.
4. Claimant saw Dr. Kairuz February 11, 2008, for complaints of neck and left shoulder pain, with numbness radiating into the left arm and fingers. Dr. Kairuz ordered physical therapy and an MRI to rule out cervical spine compression. The March 20, 2008, MRI report indicates Claimant had a small left paracentral disc herniation at C6-7 slightly restricting the neural foramen. No other disc herniations were present. Dr. Kairuz referred Claimant to Dr. Wetherington, a neurosurgeon.
5. Claimant saw Dr. Wetherington April 10, 2008. The records show complaints of neck pain and left upper extremity numbness and tingling for the past four months with no precipitating event. Dr. Wetherington opined the MRI showed degenerative disc disease changes at C5-6 and C6-7 with no spinal cord compression. Since conservative treatment had failed to relieve Claimant's symptoms, Dr. Wetherington recommended cervical epidural steroid injections.
6. Dr. Coleman performed two cervical epidural steroid injections in April and May 2008. Dr. Coleman's records indicate Claimant reported neck pain radiating into his left arm since December 2007. The pain came on gradually. Dr. Coleman diagnosed cervicalgia, cervical degenerative disc disease, and myofascial pain. He noted Claimant was not treating under workers' compensation, was not on disability, and had no plans for legal action.

7. Claimant continued to work throughout this treatment but he had difficulties and pain in his neck at work. Claimant had no more treatment on his neck until after his July 2009 work injury.
8. Claimant continues to have almost daily sharp pain in the lower part of his neck. He has daily pain in his left shoulder and arm with constant numbness and tingling radiating into his finger. He also has soreness in his left shoulder blade. When lifting, he has pain in the back of his left upper arm into his forearm and fingers. His symptoms are aggravated by lifting and looking overhead, turning his head side to side, reaching, and bending over. He takes over the counter anti-inflammatories and uses ice to reduce swelling. He has difficulty driving due to reduced range of motion in his neck. His symptoms were similar following the 2008 injury and worsened after the 2009 injury.
9. Claimant continues to work full duty as a carpenter. He would like another evaluation to determine if he needs surgery or if other treatment will fix his neck.
10. Employer's expert, Dr. Chabot reviewed the records, the MRI films, and examined Claimant. He testified he was unsure if the MRIs were done at the same facility, and resolution varies from machine to machine. His report states the MRIs were done at different facilities, and that is why Dr. Shitut did not compare the two studies.
11. Dr. Chabot opined the records show Claimant's complaints developed gradually in late 2007, supporting that his complaints were chronic and degenerative in nature. The underlying degeneration is responsible for his ongoing complaints. The 2008 MRI findings are not associated with a work injury or work duties because there is no mention in the early 2008 records of a specific work injury or duty that is responsible for his complaints, and his duties as an Estimator beginning in early 2008 were less physically demanding.
12. Claimant's expert, Dr. Volarich, reviewed the records, examined Claimant and issued a report. He opined Claimant developed a herniation at C6-7 as a result of repetitive trauma from his work leading up to 2008, and it was not degenerative. Claimant lifts heavy items at work and rests 125 pound sheets of drywall with his head while putting in the drywall screws. That is significant strain to the neck, and led to his herniation. The 2009 injury caused that herniation to worsen and Claimant developed a disc protrusion at C5-6. Dr. Volarich opined Claimant needs additional treatment.
13. Claimant is credible.

RULINGS OF LAW

Having given careful consideration to the entire record, based upon the above testimony, the competent and substantial evidence presented and the applicable law, I find the following:

1. Employer had actual notice of Claimant's injury.

Section 287.420 (RSMo 2005) requires a claimant to provide written notice of an injury within thirty days, "unless the Employer was not prejudiced by the failure to receive notice."

In *Doerr v. Teton Transportation, Inc.* 258 S.W. 3d 514 (Mo.App. S.D. 2008), the court reviewed the notice provision and found a failure to give timely written notice may be excused if the failure did not prejudice Employer. A claimant may show a lack of prejudice where the evidence of actual notice was uncontradicted. Notice is imputed to the employer when it is given to a supervisory employee.

Claimant credibly testified he told his supervisor he had neck pain and he would go to his doctor without filing a workers' compensation claim. As with his prior compensable injury, Employer did not require Claimant complete an accident report. No evidence was introduced at trial to refute Claimant's testimony or to show Employer was prejudiced by failure to provide timely written notice.

I find Claimant met his burden of proving he provided actual notice to Employer of his injury.

2. Claimant sustained an injury by occupational disease which arose out of and in the course of his employment and was medically and causally related to his work.

Section 287.067 RSMo(2005) defines occupational disease as "an identifiable disease arising with or without human fault out of and in the course of the employment...An injury due to repetitive motion is recognized as an occupational disease for purposes of this chapter. An occupational disease due to repetitive motion 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."

Claimant developed neck pain while working as a carpenter. This job required lifting heavy sheets of drywall and door frames, reaching and bending, and substantial overhead work. Claimant developed neck complaints while working as a carpenter and before he became an Estimator. Claimant reported his complaints to his supervisor in December 2007, and sought medical treatment as early as January 4, 2008.

Claimant's expert, Dr. Volarich, opined the repetitive nature of Claimant's overhead work was the prevailing factor in causing a C6-7 disc herniation. He explained the 2008 MRI showed a disc herniation and annular tear. Disc degeneration can cause some bulging or protrusions, but a herniation and annular tear usually take a traumatic event. Claimant's work involved lifting heavy items and he often rested 125 pound sheets of drywall on his head while putting in the drywall screws. This is a significant strain to the neck, and this repetitive work caused the disc herniation.

Employer's expert, Dr. Chabot, noted Claimant's symptoms began in late 2007, and were chronic and degenerative in nature. Claimant's disc herniation was due to chronic degenerative changes. He concluded Claimant's job duties were not the prevailing factor in the development of his condition because Claimant was an Estimator in 2008, and that job required little to no lifting. He also based his opinion on the fact that the 2008 medical records do not specify a work activity or event as the reason for the onset of his complaints.

Claimant's treating records from his primary care physician do not reveal any neck complaints until 2008. Claimant worked in a heavy duty, repetitive occupation until early 2008, after his neck complaints began. Dr. Chabot repeatedly justifies his causation opinion with the lack of medical documentation of a work injury or duty causing complaints in 2008. Claimant cannot be held accountable to report he had sustained an occupational disease until a medical expert has made a causal connection between the medical condition and a work-related activity. Claimant was not diagnosed with an occupational disease until well after his 2008 treatment.

I find the opinion of Dr. Volarich more persuasive. Claimant was working as a carpenter performing repetitive heavy overhead work when his symptoms began, and this work caused his symptoms to develop. I find Claimant's work was the prevailing factor in causing his condition.

3. Claimant is entitled to further medical treatment.

Claimant testified he continues to have neck and upper extremity complaints. While his symptoms improved after conservative treatment in 2008, he continued to have pain in his neck and left arm with tingling in his fingers. Each medical expert opined Claimant would benefit from updated diagnostic studies, and may need additional treatment. Claimant is entitled to additional medical treatment to cure and relieve the effects of this injury.

4. Claimant is entitled to future TTD.

Pursuant to this award, Claimant will receive additional medical care. Employer is ordered to provide TTD benefits to cover the healing period associated with such treatment if Claimant is unable to work during that period.

CONCLUSION

Claimant sustained an injury caused by repetitive trauma in the course and scope of his work as a carpenter. He is entitled to additional medical treatment and TTD if he is unable to work while undergoing such treatment. All remaining issues are left open for future determination.

Date: _____

Made by: _____

KATHLEEN M. HART
Administrative Law Judge
Division of Workers' Compensation